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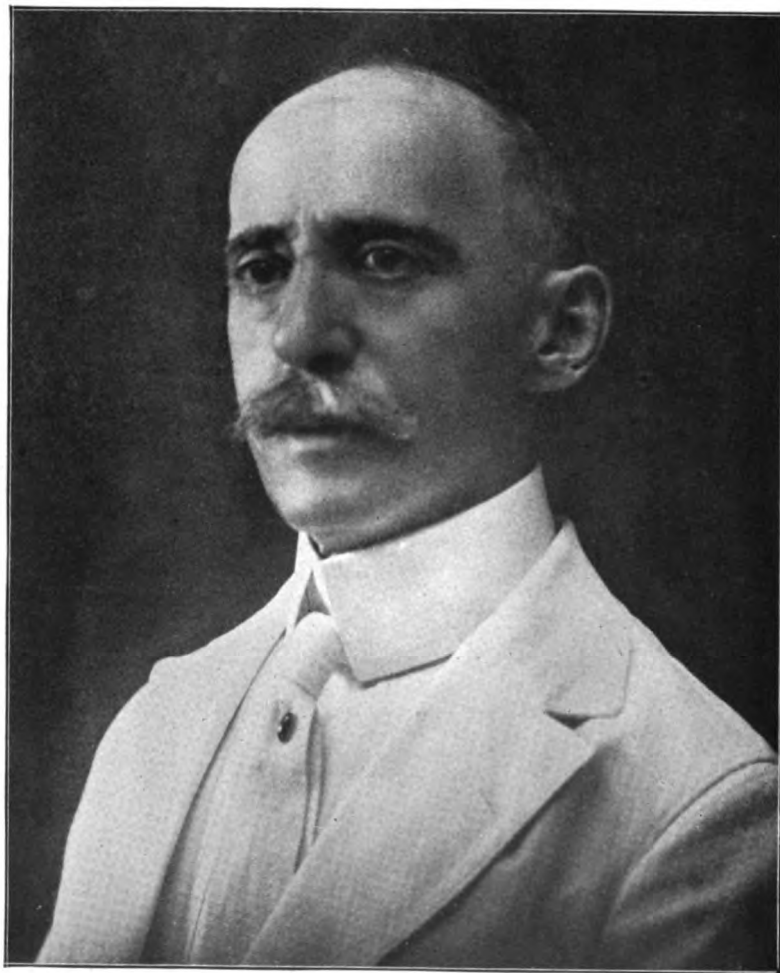
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82 May 1919.



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JOS. H. NATHAN
Fortieth President

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PROCEEDINGS

OF THE

Fortieth Annual Meeting

OF THE

ALABAMA STATE BAR

ASSOCIATION

HELD AT

o

BIRMINGHAM, ALA.

**JULY 12, 13 AND 14,
1917**



APR 5 1919

PROCEEDINGS
OF THE
Fortieth Annual Meeting
OF THE
Alabama Bar Association
HELD AT
Birmingham, Alabama
July 12, 13 and 14, 1917.

Hall of the Birmingham Civic Association,
July 12, 1917.

The Fortieth Annual Meeting of the Alabama State Bar Association was called to order by the President, Hon. Jos. H. Nathan, in the Hall of the Birmingham Civic Association, Birmingham, Ala., at 10 A. M. on Thursday, July 12, 1917.

The President then read his address.

PRESIDENT'S ADDRESS

Gentlemen of the Alabama State Bar Association:

It is under conflicting emotions that I take charge of this the 40th annual meeting of this Association. Appreciating the distinguished honor conferred by making me President and realizing to its utmost that distinction, I am deeply impressed with the fact that I have failed to measure up to the standards set by former Presidents of the Association.

The French have an expression that rises in its pith and truth to the dignity of a proverb, which, when literally

translated, means "He who excuses himself accuses himself." I transpose that expression.

I here and now accuse myself. During the past year I have practically done nothing towards the upbuilding of the Association. I doubt not that every officer of the Association who has kept in touch with its affairs—and by that you know who every officer is—will agree, that I have been derelict.

I have ignored the express injunction of the Constitution of this Association in the preparation of this address, in that I have failed to prepare myself so that I can communicate the most noteworthy changes in statute law on points of general interest made in the several States and in Congress during the preceding year.

Against these derelictions I call to the mind of each of you that the past year has been singular in our lives.

Things that ordinarily occupied us, even matters of more than passing importance, have been driven out of consideration.

The world is in a state of unrest. An expert metaphysician who could examine humanity individually or collectively, would be driven to pronounce us all as being in fever and under high pressure.

For weeks I have made efforts to isolate my mind sufficiently that I could prepare a coherent address to deliver to you, following lines laid down by every President for the past forty years. Time after time I have set aside occasions when I might write this address, but I have not been able to draw my mind away from the motion and emotions of the world movements for a sufficient length of time to give that calm thought to which an address to an association of this character is entitled.

In the busiest moments of my professional life, I have overhanging me, surrounding me, an atmosphere of apprehension; the freedom of thought and expression that I have had through all the years of my life preceding, have been suppressed. I believe that every member of the As-

sociation must have a kindred feeling, whether he is personally interested in the war in having some close kinsman connected with the crisis or not. We are passing through a period in the world's history the like of which its past shows no parallel. The World's Butcher and Blood-letter of today stands transcendent above all the Butchers and Blood-letters of the past. Is it then to be wondered that an average man, for the time, finds it difficult or impossible to remain the ordinary, calm, professional lawyer?

This is my excuse.

In the early part of the present year, on the invitation of a committee of the American Bar Association, I attended a conference of the committee, together with Presidents of State Bar Associations, looking to a closer affiliation of the several State Associations with the American Bar Association.

As the representative of this Association, I was made a member of a committee to devise plans furthering this object.

The committee recommended that another conference, where every State Association could be represented, should be held on the first Monday in September, the day preceding the annual convention of the American Bar Association, at Saratoga Springs, New York.

The committee further suggested that at this meeting there should be three topics discussed, divided as follows:

- (1) How can Bar Associations help the public?
- (2) How can Bar Associations help each other?
- (3) How can Bar Associations raise the standards of the profession?

I am advised that the topics above outlined will be discussed at this conference under a program that has been arranged. There will be three sessions of the conference, all to be held Labor Day. First session will begin at 10 A. M. and it will select its own chairman. Ex-Senator Root had consented to act as temporary chairman, but

since his mission to Russia in the interest of our government, Ex-Justice Chas. E. Hughes has expressed a willingness to take the place that was to have been filled by Senator Root.

A number of very prominent lawyers have consented to open these discussions, which will be free to all those lawyers who attend as delegates from the several State Bar Associations. No formal papers are to be prepared and those invited to lead are invited to speak informally and for not longer than fifteen minutes. It is the plan so to organize the sessions that opportunity will be afforded for the fullest and frankest interchange of views. State Bar Associations are entitled to send three delegates and local associations two delegates to this conference.

I direct the attention of the Association to this important meeting. It will lead to a closer union among the members of the profession as well as an uplift in the conditions prevailing in some sections of the United States. I trust that our next President of the Association will see proper to send the accredited delegates to this conference.

CONSOLIDATED COURTS

The consolidated court law has now been in force six months. Not sufficiently long to judge either its virtues or faults. In my section, we have much apprehension about the accumulation of work that has been put on the trial judge. However able one is, he can only do so much in a given time. Economy in time to litigants is as important as economy in the expenditure of money to the State. Of one thing I think there is unanimity of opinion—that is, that with the increased duties placed upon them, the judges of our courts are entitled to increased pay. And, eliminating the question of increased work, the fair-minded members of the profession must admit that under present economic conditions, the pay of our trial judges is inadequate.

I direct the attention of the members of the Association to an unfortunate condition that has long existed in our State, undoubtedly known to all of us: That is, the condition of the negro population of the cities and towns of the State with relation to their prosecution for violations of municipal laws and State prosecutions for misdemeanors.

Every lawyer knows that these unfortunate people are frequently imposed upon, but none of us can even estimate the extent of these impositions.

It is true that they are frequent violators of the law; it might be said that they are by nature misdemeanants; misguided and often deliberately mis-led.

It must strike lawyers who have followed the slow evolution of civilization, that it is contrary to fairness and simple justice, those elements that we revere, that these poor people, with hardly a generation of freedom, should be held to the strict accountability of civic good conduct expected from those who have a thousand years or more of civilization's restraints thrown around them.

Generally, the law officers are not severe in handling these poor unfortunates, but frequently police officers, municipal courts and justices of the peace make the small vices of the negro a source of inordinate profit by wholesale prosecutions.

Alabama, with a population of 40% Negro and with a Bar that takes front rank in progressive movements looking to the betterment and uplift of its citizens, should devise some character of plan that will ameliorate this condition.

In fact, the poor white man often shares the same character of oppression.

The State employs a lawyer to prosecute violators of the law. When the State Solicitor's office was instituted it was not expected that he would represent the commonwealth in the prosecution of every little misdemeanor. The office that he held was one of dignity and it was rare, if ever, that he prosecuted for a misdemeanor.

Today, the larger part of the Solicitor's business in all the courts of the State is the prosecution of poor, unfortunate negroes for misdemeanors.

I have had the thought, and I offer it to you, gentlemen, for consideration, that the State should create some officer in each community whose duty it should be to counsel these unfortunates and protect them from oppression.

One can hardly blame the negro for abandoning his home under the conditions that exist in some sections of the State.

NATIONAL LEGISLATION

The legislation that has been enacted and is being enacted by the Congress of the United States would have been thought revolutionary and unbelievable before the breaking out of the European war.

The Compulsory Military Law; the Act Controlling Exports and the Acts now under consideration which will undoubtedly be passed in some form, are accepted by the people, lawyers and laymen, as a matter of course.

More power than has ever yet been held by a single individual in any modern government, it is said and I think truly, has been or will be given to our President.

It is a great tribute to the character of our government that these tremendous powers are reposed in one man without a thought of danger to our institutions.

It is a greater tribute to the character of the man who occupies that office that no apprehension is felt but that when the emergency passes he will return to his people those extraordinary powers without abuse or misuse.

THE CALL OF THE HOUR.

All of my life, breathing the air of freedom of this country of ours; living under its beneficences; accepting its bounties; reading the history of its struggles, I have felt

regret that no one with whom I was of blood-kin had participated in any of its mighty struggles or aided in laying its foundations.

I speak of myself as one of a class, composed, I dare say, of millions, whose parents were alien-born; who fled to this country to escape oppression of some kind and who found here but one Ruler, that the Law and that Law made by those to be Ruled.

The spirits of the Lawyer-Soldiers of Alabama hover over us today; their names fill the pages of the history of our loved State with luster and renown. The thought of war brings before us the forms of Wheeler, Pettus, Morgan and a host of others, distinguished soldiers and distinguished lawyers.

Let them pass in review before the younger members of the Bar as exemplars for their conduct and let us pass them in review when we consider the character of fatherly, brotherly or friendly advice we give to the Junior Member of the firm.

We grey-heads and bald-heads must remember that the very profession in which we are engaged inspires to participation in all things that affect the State in its minutest detail. We are on one side or the other of every question, as frequently wrong, as right, but always somewhere in the contest. Generally a lawyer is made to take a prominent part in its leadership, not because of his self-assertion but because of his capacity for leadership. So it has been and so it will continue to be, that the lawyers who become soldiers forge to the front, not by reason of greater bravery, but that same capacity for leadership and control of men asserts itself in military as well as in civil life. It lies in the very spirit of the profession; a profession of sacrifice for public good and every natural lawyer is ever ready to sacrifice his own interest when public good can be furthered.

So, when the Junior Member comes to you, his eyes glistening; his cheeks flushed and says: "Partner" or "Old

Man," or "Father" or any old thing, "I am going to enlist." And you know that every drop of his blood is coursing through his veins driven by a heart filled with patriotism and every thought of his active brain is centered on his country's danger and needs; the true lawyer does not live who would by word, look or act do aught to deter that boy from adopting that course.

DON'T TRY TO RAISE THE CURTAIN

I am old enough and have become philosophic enough to say that it is useless to try to look into the future. I do keep an aneroid barometer on my mantle at which I look at frequent intervals with the view of determining the probable state of the weather for the ensuing 24 hours. I have established something of a reputation in my neighborhood by having been fortunate enough to be able to tell one or two of my neighbors whether or not it was a good time to cut hay, with success. I have only this to say, that one is better conditioned to meet these events who looks with care over each moment of today.

You have in your city a distinguished member of the Bar and of this Association who claims to be something of a Seer. I read in the newspapers that he has predicted the very day on which the present war will end. I want to bear testimony to this gentleman's ability in that direction.

He was a visitor in the City of Sheffield some years ago, where he spent a few days. His geniality is, or was, as you all know, of such a pervasive character that the whole community was affected.

I witnessed a demonstration of his power at a game of cards. He is supposed to know little or nothing about the game of Poker. I saw him direct one of the players to throw away a pair of kings and draw four cards to an Ace whereby he made an Ace-full against a pat flush.

But whatever the future has in store; whether the tre-

mendous conflict shall be brought to an early end, as all must hope, or continue to the complete exhaustion of one side or the other, it is our plain duty to hold our minds and view the developments as nearly as possible at the normal. The mob spirit, which will rise at times, must be held in check and the lawyer who cannot go to the front or otherwise aid his government, may be as useful in his efforts to control this spirit in his community as if on the firing line.

I cannot close without expressing to you again my deep appreciation of the honor conferred on me. I shall cherish the fact of being President of this Association as the most signal that has been conferred on me.

I feel sure that this meeting will result in renewed efforts on the part of its members for the betterment of our people as well as of the profession.

The President:

The next order of business is the Report of the Treasurer.

The Treasurer then read his report as follows:

TREASURER'S REPORT.

Mr. President and Members of the Association:

The Treasurer submits the following report of the finances of the Association for the year ending July 9, 1917.

RECEIPTS.

To balance on hand at meeting July 14th, 1916.....	\$1272.85
To cash received from annual dues.....	1460.00
To cash received from Department of Archives and History for 75 copies of 1916 Proceedings.....	75.00
Total receipts.....	<u>\$2807.85</u>

DISBURSEMENTS.

1916.

July 15. By cash. Expenses at meeting	\$ 20.00
July 22. By cash. C. S. McDowell, Jr., President, for telegrams, postals and printing.....	18.10

July 29.	By cash.	Dr. W. M. Lile, expenses.....	46.40
Aug. 14.	By cash.	Tennis Tidwell, Chrm. Dinner to the Association	363.00
Aug. 15.	By cash.	Pat McGaully, stenographer	58.30
Aug. 15.	By cash.	Expenses to Sheffield to confer with President about committees, etc....	20.00
Sept. 13.	By cash.	Tresslar's Studio, photographs of ex- Presidents	40.50
Sept. 19.	By cash.	Service Engraving Co., engraving pic- tures of ex-Presidents	82.25
Oct. 28.	By cash.	Paragon Press—600 copies of Pro- ceedings 39th Annual Meeting.....	668.00
Oct. 28.	By cash.	Postage on copies distributed.....	36.50
Nov. 13.	By cash.	Paragon Press—large envelopes	1.00
1917.			
Jan. 8.	By cash.	Filing case35
Mar. 17.	By cash.	Paragon Press—Notice of dues to members and stamped envelopes... ..	12.50
Mar. 31.	By cash.	Woodruff Press—books of drafts.....	1.50
Apr. 4.	By cash.	Draft on Obe Riddle for dues, reported in error as paid by bank.....	5.00
May 1.	By cash.	First National Bank of Montgomery, Exchange on drafts collected.....	7.70
June 19.	By cash.	Expenses to Birmingham to confer with committee Birmingham Bar Association about meeting	9.00
June 21.	By cash.	Paragon Press—Programs 4th An- nual Meeting and stamped en- velopes	17.00
July 9.	By cash.	Postage during year	9.50
July 9.	By cash.	Secretary's salary to July 1st, 1917....	500.00
Total disbursements			\$1916.60
The balance on hand is.....			891.25
			<hr/> \$2807.85

ALEXANDER TROY,
Treasurer.

Audited and approved July 10, 1917.

ORMOND SOMERVILLE,

W. L. MARTIN,

Sub-Committee of Executive Committee.

The President:

You have heard the reading of the Treasurer's report. What will you do with it?

Mr. Fitts:

I move that the report be received and filed.

Motion adopted.

The President:

The next order of business is the report of the Executive Committee by the Chairman, Hon. Ormond Somerville.

Mr. Harsh:

Judge Somerville, unfortunately, is not present, and has asked me to present the report.

The Executive Committee nominates the following gentlemen for membership in the Association:

A. Whaley, Andalusia; J. A. Carnley, Elba; Arthur M. Pitts, Selma; Chas. J. Scott, Fort Payne; Wm. H. Samford, Montgomery; A. D. Pitts, Selma; James J. Ray, Jasper; Norman Gunn, Jasper; E. M. Baker, Fort Payne; James L. Davidson, Birmingham; D. G. Ewing, Birmingham; T. A. Murphree, Birmingham; Theo. J. Lamar, Bessemer; Ivey F. Lewis, Birmingham; David J. Davis, Birmingham; Frank S. Address, Birmingham; Arthur L. Brown, Birmingham; R. D. Johnston, Jr., Birmingham; A. C. Birch, Birmingham; N. L. Steele, Birmingham; Roy M. Sterne, Birmingham; Geo. P. Bondurant, Birmingham; Augustus Benners, Birmingham; V. J. Nesbit, Birmingham; Luke P. Hunt, Birmingham; F. D. McArthur, Birmingham; L. J. Haley, Birmingham; J. Q. Smith, Birmingham; Horace C. Wilkinson, Birmingham; G. M. Edmonds, Birmingham; John C. Carmichael, Birmingham; James M. Hanby, Birmingham; James A. Mitchell, Birmingham; Jos. T. Collins, Jr., Birmingham; Thos. J. Judge, Birmingham; Fred G. Moore, Birmingham; J. L. Drennen, Birmingham; James G. Davis, Birmingham; Wallace McAdory, Birmingham; John C. Pugh, Birmingham; Horace C. Alford, Birmingham; M. B. Grace, Bir-

mingham; Ralph W. Quinn, Birmingham; William Hawkins, Eutaw; J. D. Pope, Birmingham; C. C. Nesmith, Birmingham; J. M. Kidd, Birmingham; R. L. Blanton, Hayleville; Brenton K. Fisk, Birmingham; R. A. Cooner, Jasper; J. M. Pennington, Jasper; C. A. Avant, Birmingham; T. L. Sowell, Jasper; Roderick Beddow, Birmingham; W. M. Spencer, Jr., Birmingham; C. A. Wolfes, Fort Payne; J. W. Patton, Birmingham; D. A. Greene, Birmingham; Sid P. Smith, Birmingham; J. H. Ward, Birmingham; W. V. Mayhall, Hayleville; E. L. All, Birmingham; J. C. Hail, Birmingham; B. G. Farmer, Dothan; A. E. Pace, Dothan; Addison White, Huntsville; J. T. Glover, Birmingham; W. M. Woodall, Birmingham; Jno. H. Miller, Birmingham.*

Mr. Fitts:

In order to comply with the Constitution, I move that each gentleman reported on be separately elected by ballot, and that the Secretary be authorized to cast the ballot for the Association.

The President:

In order to entertain that motion it would be necessary to suspend the rules. The question is upon the suspension of the rules. The rules are suspended, and the question arises on the adoption of the motion.

Motion adopted.

The Secretary:

Mr. President, it gives me pleasure to cast the unanimous vote of this Association for each of the gentlemen whose name has been read by the member of the Executive Committee.

Mr. Harsh then read the report of the Executive Committee as follows:

*Messrs. James A. Mitchell and David J. Davis failed to avail themselves of their election to membership.

REPORT OF EXECUTIVE COMMITTEE.

Mr. President and Gentlemen of the Association:

The Executive Committee begs leave to submit the following report:

As required by the laws of the Association, the Committee has held regular monthly meetings and duly disposed of the business that has come before it.

The books, accounts and vouchers of the Treasurer have been examined with care, and we find that all funds received by the Treasurer have been properly accounted for, and that his books have been correctly kept. The financial condition of the Association is, as usual, good.

The Committee received a warm invitation from the Bar Association of Birmingham to hold the Annual meeting of the Association at Birmingham. This invitation was re-enforced by separate special invitations from the Birmingham Civic Association, the Birmingham Chamber of Commerce, and the Birmingham Board of Trade,—an aggregation of hospitality and welcome which was fairly irresistible, to say nothing of the numerous other inducements. The Committee therefore selected Birmingham as the place for our Fortieth Annual Meeting, and fixed the date of the meeting on Thursday, Friday and Saturday, the 12th, 13th and 14th of July, 1917.

The extension of the meeting to three days, instead of two, as heretofore, marks an innovation which the Committee deemed desirable, if not necessary, in order that the business and social activities of the Association might find time for fuller and freer expression than has been possible within the more limited time heretofore allotted to our meetings.

The entertainment of the members of the Association has been provided for, the details of which will be found on the printed programs to be distributed.

The Committee invited Hon. H. G. Connor, a distinguished ex-Justice of the Supreme Court of North Car-

olina, and now Federal Judge of the Eastern District of that State, to deliver the Annual Address. The Association is to be congratulated upon his acceptance of the invitation. His address has been made a special order for this evening as appears from the program. Members of the Association have been invited to read papers at this meeting, and the names of those accepting will also be found on the program.

The roll of Life Members, those who have paid dues for twenty-five years and are now exempted, under the amendment to Art. VI of the Constitution, from further payments—is increased this year by the addition of the names of William M. Blakey, Esq., and Honorables N. D. Denson, S. H. Dent, Jr., and A. A. Evans. There are now forty-three members of this class.

Since our meeting of 1916, the Association has lost by death the following members, whose loss is deeply felt: H. R. Golson, Esq., Hon. Geo. P. Jones, Hon. John Pelham, Hon. Walker Percy, Hon. W. L. Pitts, and Edward S. Watts, Esq.

The League to Enforce Peace, a national society of which Hon. Wm. H. Taft is the President, has addressed to this Association, through its Secretary, Col. Troy, a suggestion that it adopt a resolution in the form substantially of the document hereto attached, pledging its loyal support to the Government in the prosecution of the war, and its indorsement of the plan for a League of Nations to secure an enduring peace.

The Executive Committee herewith, but separately, submit this resolution for your consideration and action, and heartily endorse its spirit and its purpose.

As requested by Hon. George Whitelock, Secretary of the American Bar Association, we submit for the consideration of the Association certain amendments to the Constitution and By-Laws of the American Bar Association, together with the letter from Mr. Whitelock on the subject. It will be observed from these amendments that only

in the event the President and Secretary of the State Bar Association are members of the American Bar Association can they be called on to act on the General Council and Local Council respectively.

Believing that a closer affiliation between the American Bar Association and the State Bar Associations would be to the interest and benefit of each, we respectfully call to the attention of the Association the following recommendation made at a Conference of delegates from fifty-one State and Local Bar Associations held at Chicago, on August 28th, 1916, to the American Bar Association, for the purpose of ascertaining if it is not the wish of this Association to request the delegates sent by it to the next meeting of the American Bar Association, if another Conference of delegates from State and Local Associations be called prior to the meeting of said Association, to present again said recommendation and urge its adoption:

"On and after January 1st, 1918, every applicant for membership in the American Bar Association shall be a member of the recognized State Bar Association of his State, if any exists; provided that this requirement shall not apply to a person who has been for 20 years a member of the Bar at that time."

Respectfully submitted,
ORMOND SOMERVILLE, Ch'mn.,
W. F. MARTIN,
G. R. HARSH,
ALEX. TROY, Ex. Off.

SUGGESTED FORM OF RESOLUTIONS
TO BE ADOPTED BY CONVENTIONS OF PATRIOTIC
MEN AND WOMEN EVERYWHERE.

Whereas, the President of the United States has, in his message to Congress on April 2, 1917, declared that our object in waging war is to set up among the really free and self-governed peoples of the world such a concert of

purpose and of action as will henceforth insure the observance of peace and justice in the life of the world, and

Whereas, the Alabama State Bar Association recognizes in the exalted object of the war, as stated by the President, the world's greatest opportunity to extend world brotherhood and secure the blessings of an enduring peace.

Therefore, be it Resolved, that the Alabama State Bar Association pledge its loyal support to the Government of the United States in the prosecution of the war and further,

Be it Resolved, that the Alabama State Bar Association, individually, and as a body, in every available manner make known the high purpose and object of the war to the end that at its conclusion a League of Nations to secure an enduring peace may be established, and

Be it further Resolved, that a copy of this resolution be sent to the President of the League to Enforce Peace, 70 Fifth Avenue, New York City.

July 5th, 1917.

Alexander Troy, Esq., Secretary,
Alabama State Bar Association,

My Dear Sir:

Montgomery, Ala.

Your State Bar Association will soon convene and I am writing to express the wish that the meeting may be a great success. Many thanks for the program which you sent.

I shall be glad to be advised of the action which your Association takes in the matter of the Constitutional Provisions of the American Bar Association, and also to learn promptly the names of your new officers. Many thanks for the program.

I beg to call your attention to the following amendment to the Constitution and By-Laws of the American Bar Association adopted by the Association at its recent meeting in Chicago (August 30, 31, Sept. 1, 1916), whereby the

President and Secretary of your State Bar Association become a member ex-officio of the General Council and Local Council, respectively, of the American Bar Association from your State, viz:

"The President of each State Bar Association recognized by this Association, which accepts this provision, shall become a member ex-officio of the General Council provided he be a member of the American Bar Association, and provided further that votes in the General Council be by States whenever a roll call is asked."

"The Secretary of each State Bar Association recognized by this Association, which accepts this provision, shall become a member ex-officio of the Local Council for such State, provided he be a member of the American Bar Association."

This action by the Association was upon the recommendation of the Conference of Representatives of the American Bar Association and the various State and local Bar Associations which met on August 28, 1916, in Chicago.

I shall be very glad if you will bring this provision before your State Bar Association and advise me of its action thereon.

Yours very truly,
GEO. WHITELOCK,
Secretary.

The President:

What will you do, gentlemen, with regard to the Report of the Committee?

Mr. Harsh:

I suggest we have separate votes with reference to the separate matters contained in the report; and with regard to one of them I think it is the patriotic duty of this Association and it is being done all over the country. I move that the resolution suggested by the League to Enforce Peace, be adopted by the Association.

The President:

It is open for discussion. If no one desires to be heard

on it I will put the motion.

Motion adopted.

Mr. Wood:

As I understand the Annual Address by Hon. H. G. Connor of North Carolina, will be delivered at 8:30 o'clock Thursday evening in the Ball Room of the Tutwiler Hotel. I desire to make a motion that the general public, both ladies and gentlemen, be invited to attend that meeting.

Motion adopted.

Mr. Bradshaw:

With reference to the Report of the Executive Committee, it occurs to me, if I understand it, there should be action by this Association with reference to the amendments to the Constitution of the American Bar Association.

The President:

That is with the Association, whether it desires to take action on them or not.

Mr. Bradshaw:

I move that the proposed amendments be adopted or accepted by this Association, whichever may be proper.

The President:

I would like to make a suggestion to the Association on that subject. As I understand the resolution it is in the nature of a suggestion from a State Bar Association as to the manner in which they should make members of the American Bar Association. I don't know whether the resolution as read by Mr. Harsh contains that feature or not.

Mr. Harsh:

It is a recommendation of the Executive Committee for action by this body, and if I be permitted I would suggest if this body would pass a resolution that the recommendations of the Executive Committee be concurred in, that it will be all sufficient with reference to that subject.

The President:

It occurred to me that we would be passing a resolution by this Association that would, to a certain extent, impress the American Bar Association that we want to tell

them how they should make members of their Association.

Mr. Harsh:

No, but that our delegates who attend the next meeting should endeavor to carry out this idea.

The Secretary:

That this same recommendation adopted by the Conference last year, be again urged in the Conference if one is held prior to the meeting of the American Bar Association.

The President:

You understand the motion, gentlemen?

Mr. Sims:

I happen to know something about the matter under discussion and will endeavor to explain it. I do not think Mr. Harsh was present at the meeting of the American Bar Association last year in Chicago. Mr. Nathan W. MacChesney, President of the Illinois Bar Association, had been chiefly instrumental in formulating a plan to require all members of the American Bar Association to be members of their respective State Bar Associations. The plan was designed to strengthen the State Bar Associations, by creating a general plan of membership similar to the plan of organization of the Medical Associations throughout the country.

The plan was discussed at a meeting of the delegates from the several State Associations to the American Bar Association held in advance of the meetings of the Association itself, and was considered and disapproved by the Executive Committee of the American Bar Association.

A compromise measure was recommended however, by the Executive Committee—the measure now brought before us for acceptance by the report of our own Executive Committee—namely, that the President of each State Bar Association which accepts the plan be ex-officio a member of the General Council of the American Bar Association, and the Secretary of each State Association be ex-officio a member for the Local Council from his State for the American Bar Association.

The objection to this is that the plan stipulates that in meetings of the General Council, the formal vote shall always be taken by States; and as we have one member of the Council anyway (at present Mr. Rudolph) the vote of the State would be nullified if the member from the State and the State President should disagree.

The American Bar Association adopted the compromise plan proposed by the Executive Committee; but the matter will probably come up again at the next meeting at Saratoga when the delegates from the different State Associations again meet in advance of the general meeting as they have been invited to do.

Mr. Burr:

I move that the motion by Mr. Bradshaw be tabled; I understand that his motion was to adopt this recommendation.

Mr. Bradshaw:

I had no purpose in offering the resolution whatever, except that I thought it should not be passed over without some notice; I have no feeling in the matter, and it makes no difference to me whether it is adopted or tabled.

Mr. Burr:

I move as a substitute that the motion be tabled.

Mr. Fitts:

I suggest that a substitute be worded this way: "That the Alabama State Bar Association relegates the question again to the preliminary Conference of the American Bar Association without instructions either way." Because it is in that shape now, and let us leave it in that way. They had a preliminary Conference and this preliminary Conference has threshed it over once. Any action we attempt would be advice to the Conference. We have not evidently considered the question, and I move we send it back in that way.

Mr. Bradshaw:

I accept the substitute for the substitute.

Substitute motion adopted.

The President:

The next order of business is the Report of the Central Council by the Chairman, Henry Upson Sims, Esq.

Mr. Sims then read the Report of the Central Council as follows:

REPORT OF THE CENTRAL COUNCIL.

By Henry Upson Sims, Chairman.

Mr. President and Brother Members of the Alabama State Bar Association:

Since the last meeting of the Association, your Central Council has had about its usual amount of business to be attended to. Fourteen complaints against practising lawyers in Alabama have been filed with us during the past year; four of which required careful consideration from the Council before being dismissed.

The cases which were fully heard and examined in meeting before dismissal were by no means merely trifling accusations; they required careful consideration, and although our conclusion was that the charges in each case were not proven, we feel sure that all parties involved, accused as well as accusers, received our decision with confidence that the Alabama Bar will do nothing short of justice toward any proven malfeisor among our numbers.

The public would have, perhaps, more confidence in the thoroughness of our work if the Bar Association employed detectives and searched for evidence to support disbarment proceedings whenever a rumor of malpractice comes to our ears; and our Association has gone some distance in that direction by creating our "Committee on Violation of Ethics and Law by Attorneys," which does a good deal of work collecting evidence.

But several years of experience on the Council have led us to believe that about as much good may be accomplished by letting the Bar know that the designated agency of the Association will vigilantly examine any definitely verified charge or complaint which may be filed with us,

as could result from letting the public know of the comparatively few additional disbarments which would be accomplished by employing paid agents to collect evidence. This latter policy is now being pursued to some extent by the Bar Associations in New York; but after all, the number of disbarments must be relatively small as compared with the instances of malfeasance which must occur so long as the number at bar is too great for many capable members to make a good living at law—a living at least as ample as that made by any skilled artisan in the neighborhood.

Of course, we realize that in making that statement we raise an issue of fact which can be positively settled only by statistics; whereas we have in the main only superficial evidence upon it. But it has been asserted by New York lawyers speaking before the American Bar Association that the average yearly income of a New York lawyer is only \$1000; and the Birmingham members of your council feel confident in asserting that the average professional income of the 370 lawyers recently listed by Mr. Alex. Troy, as practising the profession in Birmingham is nothing like so large as the average of \$1000 estimated for New York. Whereas the regular wages of a Birmingham plumber is \$6 per day, and every coal miner or locomotive engineer can make at least as much in his calling. How then can any one doubt that there are too many lawyers? And that the question of maintaining the purity of the Alabama Bar is primarily an economic question?

Your Central Council in their last year's report to the Association elaborated so fully the argument that the altered social and economic situation of the American Bar is chiefly responsible for the difficulty in maintaining its ethical standards today, that it would be an undue imposition even upon our privilege to print or reiterate the argument this year. Those who desire to examine some of the grounds for our conclusion that the situation of the American lawyers is not what it used to be, can read our

last year's report; and those who wish proof that there are too many lawyers all over America for the methods of practice to be kept within the bounds of the former moral standards, can read the discussions in the Educational Section of the American Bar Association published in the early reports beginning with that of 1910.

We will now add to those arguments and data merely some data upon the manner of limiting and controlling the practice of law in other countries than America.

Our position is that the only solution of the problem is to reduce the numbers of the Bar in future by closely restricting the right to get in, and then in the lapse of time the temptation to malpractice will disappear, and an occasional disbarment will be sufficient to warn those who do wrong for the mere love of gain, to pursue their ambition in some other calling.

In France, for admission to the Bar, the candidate must have a university degree in a course directed especially to fit him for the law, and must then study three years as an attache of a practising lawyer, during which period he must have means sufficient to be free to give his time entirely to preparation for the profession.

In Germany he must devote four years after obtaining his university degree to a course of work which makes him during the greatest part of the time an actual secretary or law clerk to the courts themselves.

In Italy a candidate for the Bar must first obtain a university degree, and follow it by two years in a lawyer's office and in attendance upon the different courts. And in Spain he must have a university degree as doctor of laws, although it seems to be unnecessary there to pass a novitiate in attendance upon the courts, or in a lawyer's office.

In the Argentine a lawyer must obtain six years university preparation; and in England and Canada, although the university degree is not actually required, the introductory attendance of three years upon the Inns of Court in the

former country and the four or five years apprenticeship in lawyer's office in the latter country, taken with the absolute control of admission by the Societies of the Bar itself, seem to be sufficient to restrict the practice to a reasonable number.

The authority for all these statements is to be found in articles read before the American Bar Association by gentlemen invited to inform their hearers upon the subject.

In short, our conclusion is that we need laws throughout America (and Alabama would do well to be among the first states to pass them) which require of every applicant to the Bar at least a university law degree; and to counteract the already developed tendency in too many years of eight months each. Then after obtaining his law degree, the applicant should pass one or two years, preferably two, in attendance upon a practising lawyer or upon the courts as an attache of some sort; and lastly, unless perhaps he holds his law degree from the University of Alabama, he should stand an examination upon Alabama law under the supervision of the Alabama State Bar Association.

It will be noted that we say, "under the supervision of the Alabama State Bar Association," for we believe that the esprit of the Bar will be encouraged by abolishing the present Board of Examiners, and instead placing the duty of examining applicants for the Bar upon the Central Council of this Association. And as a part of the change, a majority of us think that the present elaborate examinations should be abolished, and that any approved university law degree may be safely accepted as an evidence of the general legal knowledge of the applicant; the only examination of his knowledge which need be required being an examination upon the laws of Alabama, in cases of applicants whose degrees are from other than our State University. One of our number believes, however, that the Central Council should hold a thorough examination for all applicants, whether from the University of Alabama or other

universities, and upon the complete field of law. And it must be admitted that this final entrance examination is generally approved in Europe.

But it is very necessary for the Council to verify the claim of the applicant to a degree from an approved law school, and also to examine critically the evidence he should be required to submit of his general moral fitness to enter the profession.

Our plan then is that the Central Council of the Alabama State Bar Association be given control both of admission and discharge from the Bar; and we would further bring every influence to bear upon the applicant to make him a member of the Bar Association if it is suitable for him to do so; but it seems unwise to make his admission to the Bar also admission to the Association because of the old problem which must be considered in all our Southern social institutions.

Some years ago, that is, in 1915, we also recommended that our present law authorizing disbarment from the profession be strengthened by abolishing the right to jury trial and the present dilatory appeals in disbarment proceedings; and to that end that the proceedings be reduced to motions by the Central Council, or by a proper number of citizens, through the attorney-general, directly before the Court of Appeals. We now reiterate that recommendation; which we think is the best way to found out the whole system; and we feel sure that if the members of the Association will give the subject the study that has been required of all recent members of the Central Council they will conclude that no unwise inroad would be thereby made upon the liberties of the citizen.

To better specify our views on the whole subject under consideration, we have prepared and append two bills, which we term Exhibits A. and C. designed to present in first form our ideas of needed legislation.

We also append as Exhibit B, between the Bill upon admission and the Bill upon disbarment, a little bill fixing a

penalty for practising without proper admittance, which we also recommended in 1915; and which is reproduced here merely to make the system complete.

The Central Council during the past year has consisted of Messrs. Z. T. Rudolph, A. G. Smith, W. P. Acker, W. C. Davis, and the Chairman.

Exhibit A.

A BILL TO BE ENTITLED AN ACT TO PRESCRIBE THE METHOD OF ADMISSION TO PRACTICE LAW IN ALABAMA.

Be it enacted by the Legislature of Alabama :

Section 1. That the Central Council of the Alabama State Bar Association are hereby created a Board of Examiners on admission to the Bar of Alabama, provided, however, that if said Council shall ever consist of more than five members, the Chief Justice of the Supreme Court shall designate from among said Council five members who shall constitute said Board; and if said Council shall ever consist of less than three members, the Chief Justice of the Supreme Court shall select from among the members of the Bar of Alabama, actually practising in the Supreme Court enough persons to act with the members of said Central Council until said Council shall be increased to five members so as to constitute a Board of Examiners on admission to the Bar of not less than three nor more than five members.

Sec. 2. That the records in the office of the Secretary of the Alabama State Bar Association shall be the best evidence of who are the members of the Central Council thereof, and the performance of the duties imposed by this act by any person or persons shown by the records in said Secretary's office to be members of the Central Council of said Association, shall be sufficient evidence of accept-

ance of the responsibilities imposed by this act on the Board of Examiners hereby constituted. Such persons as shall be designated by the Chief Justice to act temporarily as members of said Board as aforesaid, shall communicate their acceptance to the Chief Justice in writing.

Sec. 3. That the duties of said Board of Examiners shall be to examine and pass upon applications for admission to the Bar.

Sec. 4. That said Board shall hold meetings at least twice in each year at the Capitol in Montgomery, on the second Tuesday in February and on the second Tuesday in July, and may continue for not exceeding five days; but it may hold special sessions at such times and places in the State as may be designated by advertisement in a paper published at such chosen places two weeks in advance of such meetings; which meetings may continue for not exceeding three days.

At such meetings the Board shall proceed to examine all written applications for admission to the Bar which shall be presented to them, together with the applicants themselves, and such evidence as they may present in support of their respective applications.

Sec. 5. That each application for admission to the practise of law in Alabama must be in writing and sworn to by the applicant, and must show

(1) That the applicant is a graduate with a degree in law from a school, college, or university requiring at least twenty-four full months attendance and study of law as a requisite to such degree excluding vacations extending continuously for one week or more;

(2) That the applicant has served as an assistant, clerk, or stenographer in the office of a practising lawyer in the United States, or in a court of record thereof for twenty-four months after receiving the aforesaid degree, excluding vacations extending continuously for one week or more;

(3) That the applicant is a citizen of the United States,

a resident of this State, and over twenty-one years of age; and

(4) That the applicant is of good moral character.

Sec. 6. That the Board of Examiners, or a majority thereof shall be satisfied of the truth of all the averments of an application as aforesaid, for which purpose they may examine witnesses under oath, before they shall approve the same; and for careful examination or investigation they may continue any applications from session to session.

Sec. 7. That when the Board of Examiners or a majority thereof shall be satisfied of the truth of all the averments of an application as aforesaid, each member so approving shall indorse his approval on such application, and the Board shall notify the applicant thereof in writing; and if the degree in law which the applicant holds shall have been granted to him by the University of Alabama, the Board shall at once transmit the application with their approval to the Clerk of the Supreme Court, together with a motion by the Board or a member thereof that such applicant be admitted by the Supreme Court to practise law in all the Courts of Alabama. But if the degree in law as aforesaid, which such applicant holds, shall have been granted to him by some other school than the University of Alabama, the Board shall also notify the applicant of a time not exceeding six months in future when he shall appear before them to submit to examination by them in writing upon the Constitution of the United States and the Constitution and Statute Laws of the State of Alabama.

Sec. 8. That when the applicant who shall be required to stand such written examination as aforesaid shall have satisfied the Board or a majority thereof from his written answers that he is sufficiently familiar with the subjects of the examination, they shall certify to the same in writing and transmit their certificate, together with the original application of such applicant, bearing their approval,

to the Clerk of the Supreme Court, with a motion by the Board or a member thereof that such applicant be admitted by the Supreme Court to practise in all the courts in Alabama.

Sec. 9. That as soon as the Supreme Court shall make an order granting a motion as aforesaid the Clerk of the Court shall notify the applicant; and upon his payment to the Clerk of \$10 (which shall be paid into the State Treasury), and making the following oath before the Clerk of the Supreme Court, (which shall be kept on file in the Clerk's office), he shall be authorized to practise law in all the courts of the State of Alabama.

"I do solemnly swear (or affirm) that I will demean myself as an attorney, according to the best of my learning and ability, and with all good fidelity, as well to the court as to the client; that I will use no falsehood or delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Alabama and of the United States, so long as I continue a citizen thereof, so help me God."

Sec. 10. That all laws or parts of laws in conflict herewith are hereby repealed.

Exhibit B.

A BILL

TO BE ENTITLED

AN ACT

TO PROVIDE THE PENALTY FOR PRACTISING
LAW IN THE STATE OF ALABAMA WITHOUT
HAVING BEEN ADMITTED TO PRACTISE AS
PROVIDED BY LAW.

Be it enacted by the Legislature of Alabama:

Section 1. That any person who shall practise law in the State of Alabama without having been admitted to

practise as provided by law shall on conviction be punished by a fine of not less than Two Hundred Dollars and at the discretion of the court with imprisonment in the County Jail of not more than ninety days.

Sec. 2. That this law shall not apply to non-resident attorneys present in Alabama as counsel, or practising in Court by permission of the Court granted in each case.

Exhibit C.

A BILL

TO BE ENTITLED

AN ACT

TO REGULATE THE DISBARMENT OR SUSPENSION
OF ATTORNEYS FROM PRACTISING LAW IN
THE STATE OF ALABAMA.

Section 1. That an attorney must be disbarred from practising law in Alabama for the following causes:

1. Upon his being convicted of a felony other than manslaughter, or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence.

2. When any judgment is rendered against him for money collected by him as an attorney, upon which judgment an execution has issued and been returned no property, in which case the record of the judgment and execution is conclusive evidence.

Upon the conviction of any attorneys for any such offense it shall be the duty of the Circuit Court, or other Court in which such attorney is convicted, to require the Clerk of said Court to prepare a transcript of the record of said cause under the seal of his office, and forward the same forthwith to the attorney general.

Sec. 2. That an attorney may be disbarred or suspended

from practising law in the State of Alabama for the following causes:

1. For any deceit or wilful misconduct in his profession whether in disregard of the laws of the State of Alabama or of the United States of America or in disregard of the standards of ethics recognized by the profession.

2. For wilful disobedience to, or violation of the order of a court requiring him to do or forbear an act connected with, or in the course of his profession.

3. For failure to maintain due respect to courts of justice and judicial officers.

4. For promising, or giving, or offering to promise, or give, a valuable consideration to a person as an inducement to placing, or in the consideration of having placed in his hands, or in the hands of any partnership of which he is a member, or with which he is connected, a demand of any kind for the purpose of bringing suit or making claim against another.

5. For employing any person to search for, or procure clients to be brought to him, or to any partnership of which he is a member, or with which he is connected or for knowingly accepting employment in any claim or cause solicited by another person, who has or is to receive pecuniary compensation from the claimant for any service rendered or to be rendered by such other person in relation to such claim or cause.

6. For dividing or agreeing to divide upon any basis, directly, or indirectly, any fee which may be promised or paid to him, with any person or persons other than a regularly licensed attorney at law, who may be associated with him in the cause in which said fee shall be promised or paid.

Sec. 7. That nothing in this Act shall be construed to limit or abolish the power of any court of record in Alabama of its own motion to disbar, or suspend an attorney from practising in that particular court after reasonable notice and hearing and for proper cause.

Then continue by incorporating sections 26 to 46 inclusive, of an Act reported by the Central Council in 1915, and appended and published with their report in the Report of the Alabama State Bar Association for that year.

The President:

You have heard the Report of the Central Council. What is the pleasure of the Association?

Mr. Latady:

I move that the report be received and filed.

Motion adopted.

The President:

The next item on the program is a Paper by M. M. Ullman, Esq., on "Some of the Needs of Alabama."

Mr. Ullman then read his paper.

SOME OF THE NEEDS OF ALABAMA.

That Government is organized and maintained for the protection and development of the people subject to its territorial jurisdiction, is so axiomatic that to be proven needs but to be stated.

It, therefore, follows that in a Democratic government where all power finally resides in the people governed, the intellectual standard of the individuals composing the mass determines the intellectual quality of the aggregate body politic.

In its last analysis, the State, and its Institutions can be no stronger than the average of its constituent units. It is the consensus of the opinions of the people which ripen into law, and which form social and political institutions in a democratic government.

That the institutions and laws which result from the aggregate opinion of the people, expressed in a representative assembly, may be such as is best suited to protect and develop the society which they are designed to support, it

necessarily follows that, those composing the representative assembly of the mass, should possess those qualifications of mind and heart necessary to the enactment of wise and patriotic laws, and this can, if ever, be accomplished only when the people who possess the franchise and who select the representatives are likewise possessed of those attributes of mind and soul necessary in a self-governing community.

The existence of every Democratic State depends upon the proper organization of those underlying departments common to our form of government, the Legislative, Judicial and Executive.

The people is the source of all power. From the people are chosen the instruments of the legislative branch. From the people is chosen the Judiciary, and from the people comes the Executive branch.

History teaches us that great struggles have been waged between the people as a whole, and the privileged class which formerly held and exercised the power of government, and those struggles brought about the birth of Republican institutions. Autocracy, in which the power of government is vested in one man, upon whose sole judgment, either with or without constitutional restrictions or limitations, rests the welfare of the State, and democracy in which all power is lodged by the people, are the contending forces which have waged the fiercest struggles of history. The birth of democratic government was accompanied by all the evils naturally to be expected when an untrained and inexperienced people are vested with the most important functions of society. These evils resulted from a lack of the training, experience, education and fitness essential to a wise and proper administration of the power of government. The tide of enlightened opinion has ebbed and flowed between autocracy and democracy, but as time went on, and civilization developed, men became more and more convinced that the principles enunciated in the American declaration of Independence, would eventually, not

only found a safe government for the people, but that experience would solve the evils and shortcomings incident to the introduction of every new order.

The revival of learning, with the co-eval invention of the printing press, furnished the soil in which our modern democratic form of government is cultivated.

The common schools were the hot houses in which the seed of democracy were planted, and in which these seed have sprouted and grown, blossomed and fruited.

It is safe to say that with the abolition of the public schools, civilization would lapse into barbarism within three generations. Total illiteracy would deprive the democracy of the motive power from which its strength is derived. To the extent that illiteracy is prevalent in a State, the government is inefficient. Lost motion, incompetency, unwisdom, prejudice, tyranny, and false standards of liberty, grow in proportion as illiteracy increases. And by inverse ratio, efficiency, wisdom, progress, security, civilization and prosperity increase with the advancement of learning.

Upon this premise, commonplace and axiomatic, this discussion is placed.

Our Legislative Department is chosen by direct vote of the people, and those elected hold office until their successors are in like manner elected. Except as limited by the State and Federal Constitutions, this branch of the Government possesses, and exercises all the legislative power which a sovereign people have. It is common knowledge that all legislative assemblies in Alabama have enacted laws upon laws, and at every succeeding session those laws have been amended, repealed, modified and redrafted to meet not only the advancing thought of the day, but to conform to every changing political exigency of the administration in power. With but fifty legislative days in four years, laws are enacted under lash and spur, with the consequent imperfections, inconsistency, repeals by implication and other defects so common. Log rolling, trading,

lobbying and trickery are common charges levied against the members of our Legislature. It is charged that special interests exercise their invisible government, with the resultant special privilege. "Equal rights for all and special privileges for none," is the platform upon which men get into office, but do not stand. Class legislation, exemptions from taxation, unequal distribution of burdens and opportunity afflict the people.

I do not charge that all laws are venal or unwise. On the contrary, the vast percentage of laws are wise and necessary, though imperfect and unscientific. If we admit that all laws enacted, or even a majority, are the result of selfish motives, then we are forced to admit that the people are incapable of self-government; that democracy is a mistake; that the power of government and the franchise should not be lodged in the masses, but in the classes, and this we cannot and will not admit.

Complacency, however, is the attitude which leads to lowering standards. But mere fault finding will not solve the difficulties, and the iconoclast never built an institution, though we must admit the stimulus resulting from his criticisms. But, a clear insight into the future can be based only upon a knowledge and frank admission of our shortcomings, our failures, and our defects.

With the people is all power, when properly applied and efficiently directed. The power of the people has been likened to steam generated in the boiler. When allowed to pass from the boiler to the open air, it dissipates and is spent and the heat units of the coal from which it is produced as wasted, and the principle of the conservation of energy is set at naught. The undeveloped power, dormant in the carbon as it rests in place, in the mine, had just as well remain unmined, as to be permitted to be transformed into steam if this steam is to pass from the boiler into the open air. No economist would sanction such waste. The boiler without the steam engine is useless. If instead of escaping, this steam is introduced into the steam chest of

the engine, and there compressed by the action of the piston, this organized, transformed heat unit is capable of application to the performance of the world's greatest labors. Such works as the Panama Canal could never have existed if the energy residing in coal were permitted to be wasted as the energy and power residing in the people is wasted and frittered away.

So the people, efficiently organized, properly directed, and wisely led, will produce a state, in which happiness, peace, contentment and prosperity abide. A people organized, trained, literate, educated, is an instrument of power for good. A people unorganized, untrained, uneducated, illiterate, degenerates into the mob, the pliant tool of scheming, self-seeking politicians, with the resultant state of poverty, crime, disease, bigotry and persecution.

The Judicial Department of our government likewise chosen by the people, can only rise above the level of the mass by pure chance. As a general rule Alabama has been blessed by men of integrity upon her bench. I have a profound respect for our Judiciary. Whatever weakness it possesses is due, in my opinion, not to the institution as such, but to the lack of complete fitness of the electorate of the past and present, to perform the important function of selecting men with proper qualifications for the exalted station as Judges. By our method of filling Judicial office, a station requiring special qualifications of mind and heart, we submit to those totally unskilled, the performance of a task difficult and dangerous. If the office is properly filled, it is the merest chance. Under such a system, so long as the present conditions exist, the freedom of the Judiciary and its independence will not be an accomplished fact in the history of democratic government. Some of our judges will be tempted to listen to the clamor of public opinion. Expediency will guide the Judicial mind into error. Attempts will be made to undermine sacred principles of human liberty. Narrow constructions will sometimes deprive the body politic of the benefit of advancing

thought; obstacles will be thrown in the path of progress. Evasions will be encouraged, and efficiency and extravagance will sooner or later, predominate. The standard must inevitably be lowered.

EXECUTIVE DEPARTMENT.

Much has been said and written in these latter days upon the subject of executive efficiency. However wise the laws may be, an unwise administration will result in unrest. However far sighted the Legislature may be, unless those selected to administer the laws, are qualified by training and education, government will not perform its most obvious functions. The many will be ruled by the few. The distribution of wealth, as well as the burdens of taxation will be unequal, the many will toil and sweat, that the few may rest and enjoy those things which money can buy. The power of money has not been neutralized. Men can still be corrupted. Officials not subject to bribery by gold, are still ambitious, and predatory wealth still commands a modicum of inordinate respect and some men still truckle to the power of gold. Political combinations, deemed necessary to success, in attaining office, result in electing to public office men of small or doubtful qualifications. Once in office, many men forget the source of their power, or mistakenly believe that their own political preferment is rather to be chosen, than the performance, of their duty. Thus justice is thwarted, discrimination flourishes, expediency supplants duty, and society is transformed from a bulwark of safety into an engine of oppression. Democracy is changed into a despotism, with secret plots, and secret favors, intrigue, and concessions. In this state of society men rule not by the Divine right of Kings, but by the habitual somnolence of the real sovereigns, kept in mental slavery by a lack of knowledge, training and education.

It's a dark picture. But the future is not without hope. The gigantic advances made during the present titanic

struggle in Europe is evidence of the awakening of the people not only to their power, but to their duty. The progress of the past century refutes the thought that we have wholly failed. The wealth and prosperity of this nation destroys the force of any logic which denies all virtue to democratic government. The reverence for law and order which possess the minds of the masses proves that there will never be a return to autocratic government. The trend is away from the centralization of power, and this trend will continue, but its progress depends upon the solution of the problems which have hindered and still obstruct the complete success of democratic government.

Having laid the foundation upon which the discussion is based, it now becomes necessary to analyze the symptoms of the disease which afflicts the body politic; and no analysis would be complete nor correct that failed to take account of the fact that until 1865 chattel slavery of the negro race was a recognized institution under the laws of Alabama.

The large areas of land in the hands of a few men, and cultivated by slave labor, is a fact exerting powerful influence upon present day conditions.

The issuance and sale by the State and the several counties and towns of Alabama, during the days following the Civil War, of so-called Railroad Aid Bonds, and the frauds practiced by the promoters of these enterprises, with the consequent repudiations of the obligations, and the litigation following, is another factor which exerted a powerful influence upon the political development of the State, resulting, as it did, in constitutional reforms, designed to cure the evil, but resulting in large degree in stifling progress and development of the several municipalities and county governments by a process of financial strangulation.

The condition of a state's progress is to be determined by a comparison with other states measuring up to modern standards as well as by a study of the degree in which it

utilizes those instruments of progress and development which have been furnished mankind by nature and developed by the ingenuity and genius of man.

Agriculture, as last, is the foundation-stone upon which the wealth of nations is built. The means of production and the conversion of raw materials into finished products, and the distribution of those products in the markets of the world, mark the purely physical evidences of the industrial life of any state. The utilization of the means of acquiring knowledge, disseminating information, developing and training the intellect, purifying the spiritual side of man's nature, are in like degree the indices by which may be judged the cultural development of a nation.

In an earlier part of this paper the statement was made that the revival of learning with the coeval invention of the printing press, furnished the foundation-stone upon which our modern civilization was built. The printing press made available to the world at large those creations of man's intellect in the form of books, without which the dissemination of scientific facts, as well as literary, biographical, historical, and industrial investigations would have been possible. The schools, in which the youth and maidens of today are taught and fitted for the duties and responsibilities of the men and women of tomorrow, not only enable each succeeding generation to grapple with the problems presented to it, but furnish the stimulus by which the inventive genius of man fashions, forms, and develops those instruments of progress necessary and useful in the solution of the problems of the future. Among these instruments may be mentioned the following:

The press, the public school, telephone, telegraph, taxation, agriculture—based upon scientific principles—, forestry, railroads, industrial development, sanitation and hygiene.

The proper evaluation of a state's progress depends upon the status of the basic development of its social institutions.

Statistics always furnish to the scientific investigator

the index by which he may judge and measure accomplishment; but, in a paper like this, statistics are usually dry, uninteresting, and make but little impression upon the casual listener. However, at the risk of violating this premise I shall briefly call attention to some of the statistics disclosed by the census reports of the United States.

TELEPHONES.—The number of telephones in use in the United States, in 1912, was more than 8,500,000, with 91 telephones for every 1,000 population. The highest state in the union in number of telephones per 1,000 of population was South Dakota, with 165 telephones for each 1,000, while Alabama showed only 26 telephones for each 1,000 population. There were but two states in the union showing a fewer number of telephones, to-wit: Mississippi, with 25; and South Carolina, with 21. Likewise, Alabama ranks fortieth among the states of the union in the number of telephone messages sent in 1912. California was the highest, with 828 telephone messages per capita per annum. Alabama was fortieth, with 46 telephone messages per capita per annum; while North Carolina was lowest, with only 40 telephone messages per capita per annum.

The significance of these statistics is that they are indicative of the utilization of a means of transmitting intelligence, and the degree of efficiency in the transaction of either social or business affairs.

Likewise, in the use of the telegraph, an instrumentality of the greatest economic value Alabama seems particularly backward. In the number of miles of wire, in the number of messages sent and received, in the number of stations, and in the number of operators, Alabama stands low—very low—in the roll of the states.

MUNICIPAL GOVERNMENT.—An author of great note in the science of municipal government has said that, “the development of municipal government depends upon the taxable values of property and the taxing powers confided to the governments.” It is perfectly apparent that no municipal government can perform any function with-

out the power of taxation; and, while the possession of large powers of taxation does not necessarily carry with it wisdom and efficiency in the expenditure of moneys and in the performance of its governmental functions, it is equally apparent that, without money and without the power of taxation, however wise its administrative officers may be, the government cannot discharge the responsibilities and duties incumbent upon it.

It is a strange fact but not without its cause that Alabama has but one city of more than 100,000 population. A study of the statistics of the assessed value of the property in the various cities of more than 100,000 population in the United States, discloses such startling results as the following:

New York shows a per capita assessed valuation of \$1,-765.00; Boston, \$2,061.00; Cleveland, \$1,215.00; Baltimore, \$1,259.00; Pittsburg, \$1,343.00; while Birmingham shows only \$583.00 per capita.

Taken in connection with these assessed valuations, the average rate of general property tax for city purposes is also of great importance in determining the income available for municipal purposes. An investigation shows the following:

For the cities named, per \$1,000.00 of true value, New York has an income of \$18.34 for each \$1,000.00 of true value of property; Chicago, \$18.28; Philadelphia, \$14.76; St. Louis, \$12.18; Boston, \$14.93; Cleveland, \$13.15; Baltimore, \$17.91; Pittsburg, \$18.63; Buffalo, \$18.73; while Birmingham has but \$5.00 income for each \$1,000.00 of true value of the property located within its corporate limits.

Another comparison, which shows the utter unsufficiency of the taxing powers of the Alabama municipalities, is the relative per capita income from taxation based on all revenues derived by the municipalities.

New York has a per capita income of \$39.52; Portland, Oregon, \$39.04; Seattle, \$38.63; Buffalo, \$41.26; Pittsburgh,

\$38.26; Chicago, \$31.91; and St. Louis, \$29.86. Birmingham has a per capita income, from taxation for all purposes, of only \$13.32, about 33 1-3 per cent. of the normal tax income per capita of the several cities above mentioned.

These figures are taken from the last reports of the United States Bureau of Census.

While the powers of taxation are of great importance, as above stated, the efficiency with which those revenues are expended is likewise paramount. An investigation of the statistics shows that, in expenditures of money per capita, Birmingham is the lowest of all cities in the entire United States having a population of more than 100,000. There is but one department in which Birmingham seems normal, but even in this, an investigation will disclose that Birmingham is subnormal, and that is the percentage of its income which is devoted to public schools. Most cities in the United States, of the one-hundred-thousand class and over, expend from 20 to 30 per cent. of their entire revenues in public education. Birmingham expends 32 per cent.; Salt Lake, 48 per cent.; Des Moines, 46 per cent.; Kansas City, 44.6 per cent; but this 32 per cent., which Birmingham expends, is relatively much higher than in other cities, for the reason that its income is so much lower, and its public school system is far in advance of other institutions necessary for the performance of governmental duties. Birmingham, however, is an exception in the State of Alabama. The policy has been in this State for public education to be supported almost entirely, or in very large degree, by appropriations made by the State, with few exceptions. Many of the smaller municipalities have made small annual appropriations to public schools, but the per capita in Alabama, from State, County, and Municipalities, is far below the normal appropriations obtaining in other states. At the last general election, a constitutional amendment, authorizing local taxation for public education, opened the way for an extremely important and fundamental constitutional reform on this subject, the far-reaching ef-

fects of which will require at least a generation to be accurately measured; but it may be confidently asserted that no piece of legislation submitted by the Legislature to the people, and incorporated into our organic law, has been of greater importance, and forecasts greater benefits to the State at Large, than the principle of local taxation for public education. As I shall endeavor to hereafter show in this paper, the solution of all the difficulties and defects in our State government depends upon the proper and efficient use of the public school.

Now, passing from the municipal governments to the state governments, we find that Alabama, as compared with other states, is abnormal in its assessed valuations of property per capita. The Middle Atlantic states show a per capita assessment of \$908.00; the Northern Central states, of \$816.00 average; the West North Central states, \$675.00; the South Atlantic states, \$456.00; Kentucky, \$441.00; Tennessee, \$279.00; and Alabama, \$253.00. The per capita levies and average tax rate of the several groups of states also shows that Alabama is far below any other state in the per capita levy, as well as in the tax rate. The New England states show a per capita levy of \$13.91, with an average tax rate of \$1.94; the Middle Atlantic states show \$17.71 per capita levy, with \$1.95 rate; the Northeast Central states show \$15.38 levy, with \$1.88 rate; the West North Central have \$15.06, with \$2.23 rate, the South Atlantic states show an average of \$7.15, with \$1.57 rate; the East South Central states show \$5.95 levy per capita, with \$1.96 rate; the Mountain states show \$18.45 per capita levy, with \$3.33 rate; the Pacific states show a \$23.28 per capita levy, with \$2.30 tax rate; while Alabama shows an average per capita levy of \$4.45, with an average tax rate of \$1.76. The per capita levy, therefore, is shown to be only about 33 1-3 per cent. of the normal average for the United States, while the rate itself is fully 10 per cent. below what might be considered normal.

What has been the result of these insufficient taxing

powers? It might be said that the people have thereby been saved enormous sums of money, but the very converse of this proposition is true. No people can be more prosperous than the government in which they live. If the government is backward in its development, if it is on account of insufficient means unable to functionate, the reflex must necessarily, show in the prosperity and development of the people. How has this been shown in Alabama? Take our agricultural development. Again, we have recourse to the United States Bureau of Census for 1910, and we find that the average value of farm implements and machinery per acre, of all improved lands in farms, in the various states, is as follows:

The New England states, \$7.00 per acre is invested in implements and machinery; the Middle Atlantic, \$5.71; the Northeast Central, \$3.02; the Northwest Central, \$2.25; the Mountain states, \$3.11; the Pacific states, \$3.01, while Alabama has but \$1.68.

The value per acre, in 1910, of farm lands in California, Washington, Idaho, Nebraska, Iowa, Missouri, Wisconsin, Illinois, Indiana, Ohio, and New Jersey, was \$40 and over per acre; while in Alabama, and the Southern states generally, the average value per acre of farm lands was from \$10 to \$20.

The average value of all farm property in the United States, in 1910, was, for the New England states, \$867,000,000; the Middle Atlantic states was \$2,960,000,000; the Northeast Central was \$10,119,000,000; the Northwest Central was \$13,535,000,000; the South Atlantic lying below the Mason and Dixon line, dropped to \$2,951,000.00. The Southeast Central was likewise \$2,182,000,000, with an average, for each state in the group, of \$545,692,000. Alabama is in this group, but we find that its actual value was only \$370,000,000.00, about 60 per cent. of the average in the same group, and only 30 per cent. of what would be considered to be normal.

It cannot be denied that these startling figures may be

traced to the effects of the war of 1860-65 and the abolition of the institution of slavery, and an archaic constitution with limited taxing powers, resulting, in placing upon the South an enormous economic problem which has not yet been entirely solved.

The census reports also show that the average value of farms in Alabama is the lowest of any state in the union, while the average value of farms on the Pacific coast is \$14,643.00, the average value of a farm in Alabama is only \$1,408.00.

Another factor affecting efficiency as well as value is, that of the 262,000 farms in Alabama, 104,575 are operated by their **owners**, part **owners**, or by **managers**; while 158,326 are operated by **tenants**. These operators, classified as to race, show that 151,214 are native **white**, while 1,113 are foreign born whites, and 110,443 are **negroes**. The color and nativity of the farmers in Alabama, in 1916, with the percentage of the total shows native born whites, 57 1-2 per cent.; foreign born whites was 5-10 of 1 per cent.; negroes, 42 per cent. Of those who own farms in Alabama, 82 1-2 per cent. were native born whites; 1 1-10 per cent. were foreign born whites; and 16.4 per cent. were negroes. Of the tenants who operated farms, 41 per cent. were white native born; 1-10 of 1 per cent. were foreign born whites; while 58.9 per cent. of all tenants on the farms were negroes.

Of those farms that were operated by managers, 90.7 per cent. of the managers were white native born, while 1.2 per cent. were foreign born whites, and 8.1 per cent. were negroes.

A very important source of revenue from the farms of the United States are the dairy products, and it stands to reason that the presence of cows upon a farm is an indication of prosperity, and the absence of cows is likewise an indication of a lack of it. The census report for 1910 shows that 80 per cent. of all the farms in the United States made reports of the number of cows, and the aver-

age per farm was four, while Alabama showed an average of 1.9 cows per farm, showing that only about one-half the number of cows normally on the farms are found in Alabama.

The value of the dairy products shows an average of \$135 per farm per annum, with \$31.82 per cow, while in Alabama the average is only \$39 per farm, or \$19.64 per cow.

Of the butter produced on the farms in the United States, the census report contains statistics gathered from 59.5 per cent. of all the farms in the United States, and the average of these shows 262.6 pounds of butter per farm, with the valuation of \$59 per farm, or 22 cents per pound. Alabama, however, shows only 179.7 pounds per farm, with the value of \$34 per farm, or 19 cents per pound. But it is fair to note that Alabama showed an increase of 54 per cent. from 1899 to 1909 in the quantity of butter produced. In other words, from 158.6 pounds of butter per farm, in 1899, to 179.7 pounds per farm in 1909.

Another by-product of the farms is poultry. The average number of fowls per farm in the United States is 53, while Alabama's average is only 23—the lowest in the United States. The State of Iowa is the highest, with an average of 115 fowls per farm. The total value of the eggs produced in the United States for the year 1910 was \$185,390,000.00, while Alabama only received, from the eggs sold, \$715,000.00; and, in addition to this, about \$1,100,000.00 in value of eggs was consumed upon the farms, or used for hatching purposes.

From 1899 to 1909, our bees and their products decreased in Alabama from \$197,000 in 1899 to \$99,000 in 1909.

The average value of farm crops per annum, in 1909, in the entire United States, showed that North Dakota had an average of \$2,400.00, while Alabama had an average of \$550.00. The average value of the farm products per acre in Massachusetts was \$41. Alabama was \$24, with 23 states lower and 24 states higher.

Comparison between the increase in value in the principal crops in Alabama and in other states disclosed that from 1899 to 1909 the increase in Alabama was only 12 per cent., while the average increase throughout the United States was 73.5 per cent.

The average amount of expenditure for labor per acre of the United States, on improved lands, was \$1.36; while in Alabama the average expenditure for labor, per acre, was only 77 cents.

The average expenditure for fertilizer in the United States, per acre, was 24 cents; while Alabama seemed to rely more upon fertilizer than labor, and shows an expenditure of 30 cents.

In the production of corn, the average for the United States is 26 bushels per acre; while Alabama, Georgia and Florida are the lowest in the United States, with only 12 bushels per acre. Indiana has 40 bushels; Iowa, 37 bushels; Illinois, 39 bushels; Massachusetts, 48.6 bushels; and, from 1899 to 1909, the production of corn in Alabama decreased 4,300,000 bushels.

The average yield per acre of wheat in the United States is 15.4 bushels, while in Alabama it is but 8.3 bushels. In the wheat-producing states of Montana, Idaho, Colorado, Utah, New York, Maine, Michigan, and Illinois, the production ranges from 25 bushels per acre, in Maine, to 17 bushels in Illinois, with an average of about 22 1-2 bushels.

As above stated, Alabama's production of wheat is only 8.3 bushels per acre.

Likewise, in oats, the average yield per acre in the United States is 28.6 bushels. Alabama only shows 12.6 bushels per acre.

The average production per acre for rye in the United States is 13.4 bushels. Alabama shows only 8.2 per acre.

The same comparison holds true in cornfield peas and peanuts.

The production or yield per acre of hay and forage in

Alabama is about 20 per cent. lower than the average of the United States.

The average yield per acre of potatoes in Alabama is 25 per cent. lower than the average of the United States, and 75 per cent. lower than the highest potato-producing sections, such as the New England states.

But one would expect that in the cotton crop surely Alabama would lead, or at least be normal; but the census reports do not disclose that this is true. The average yield per acre, in the cotton-planting states of the United States, is .33 of one bale per acre. The individual states are as follows:

States:	Bales per Acre.
Arizona -----	.58
Missouri -----	.56
California -----	.56
Kansas -----	.28
Virginia -----	.42
North Carolina -----	.52
South Carolina -----	.50
Georgia -----	.41
Florida -----	.25
Kentucky -----	.44
Tennessee -----	.34
Alabama -----	.30
Mississippi -----	.33
Arkansas -----	.36
Louisiana -----	.28

Now, it is perfectly evident that the lands in Alabama, Mississippi, and Louisiana are more suited to cotton production than the lands in the other states mentioned; and yet we find these three states much lower than the normal; and this can only be accounted for on the theory that those who are engaged in the production of cotton do not possess the mental qualifications and training necessary to the successful production.

When we turn to the orchard fruits, we find that Alabama is again subnormal in the average yield per bearing tree of the farms in the United States. The startling fact that Alabama does not lead in the production of a single crop, either in amount, acreage, units, or otherwise, should be sufficient to demonstrate a fundamental defect or weakness somewhere in our system.

But let us turn to the mineral wealth of Alabama. Surely we should find here some parity; but the census reports show that in the value of all bituminous coal produced in 1910, in the coal-producing states, Alabama suffers by the comparison. Pennsylvania produced \$427,900,000 of bituminous coal; Illinois, \$147,400,000; West Virginia, \$53,000,000; Ohio, \$46,000,000; and Alabama but \$27,000,000. Likewise, in the production of iron and iron ores, Minnesota shows \$57,000,000; Michigan, \$32,000,000; Alabama, \$4,900,000; New York, \$3,095,000; and Wisconsin, \$2,972,000.

The expenditures in Alabama for public education, during the year 1914, as compared with other states, or groups of states, shows a startling discrepancy. The average expenditure per capita of average attendance per child in the United States was \$39.04; in the North Atlantic states, \$50.55; in the North Central states, \$44.15; in the South Atlantic states below the Mason and Dixon line, \$18.91; in the South Central states, \$19.05; in the Western states, \$61.50; while Alabama was only \$15.32. What is the result of such a fixed policy?

In the first annual report of the Alabama Illiteracy Commission, for 1916, it is stated that 362,779 persons over the age of ten years, in Alabama, in 1914, were illiterate. This figure having been reached from the census reports and the biennial school census of 1914, classified as follows:

White males, 21 and over.....	31,661
White females, 21 and over.....	33,763
White children, from 10 to 20.....	26,259
Negro males, over 21.....	92,744

Negro females, over 21.....	108,103
Negro children, from 10 to 20.....	70,247

Of course, illiteracy and ignorance are not synonymous terms. One may be illiterate and yet possess knowledge and experience in the world, and may have sufficient knowledge to perform the duties of citizenship, and to successfully compete in the struggle for existence. Nevertheless, says Winthrop Talbot, in his report on illiteracy: "The ability to read and write is fundamental, and lack of this equipment is such a handicap that illiteracy implies ignorance. 'Intelligence' is still another matter. Intelligence implies quality, capacity, and ability. Untrained, its usefulness is restricted. In an illiterate, intelligence is stunted and imperfectly applied," resulting in decreased earning, decreased production, increased waste, and increased cost.

In twenty years, from 1890 to 1910, during which period the education of the negro made its most rapid strides in Alabama, the number of illiterates decreased 44 per cent. This rapid progress gives hope that in another twenty years Alabama may hope to eliminate illiteracy entirely from its borders by aid of the compulsory education of its citizenship, both white and black, supported by Local Taxation.

The earning capacity of the individuals composing the wage-earning class is of great importance in the economy of the State; and "wage worth is determined mainly by intelligence; and lack of schooling affects unfavorably employment, advancement, and the wage attainable."

From the foregoing, it seems that the development of our public school system to the very highest attainable point with local taxation for public education are the foundations upon which the future development of Alabama must of necessity be rested. Illiteracy and ignorance must be uprooted and driven from the borders of the State. Intelligence must supplant and take the place of illiteracy. As each individual unit composing society is endowed and equipped with a trained intellect, it will manifestly and

inevitably result that the sum total of efficiency will be increased, with the resultant increase in prosperity, in the betterment of conditions of society as well as our political institutions in all of the departments of our government.

Constitutional reforms will be demanded as soon as the people are ready to receive them. The time will come in Alabama when the limitation in the Constitution on the rate of taxation will be removed, and we will again return to the system which exercised before the war, when there was no constitutional limitation on the taxing power. That the system now prevails in the Constitution of the United States, and in the Constitution of many of the States of the Union, which are now most advanced, industrially and otherwise. The proper place to put the limitation is upon the debt-making power and not upon the debt-paying power. Many States authorize the incurring of debt by vote of the people; but, before the debt can be incurred, or at the time the debt is incurred, the people must make provision for the payment of the debt by the levy of sufficient taxes to pay the annual interest and to discharge a part of the principal for each year during a given period. This seems to be the scientific method. If the people are willing to vote a tax upon themselves in order to provide the means of any public improvement, they may safely be trusted, when possessing sufficient intelligence and education, not to unduly burden themselves by voting excessive taxation.

Another serious problem, calling for proper solution, is some feasible working plan for the regulation of public utilities. Under our present system, with insufficient appropriations to our public utilities commission, it is utterly impossible for it to make scientific investigations, on its own account, of the rates and practices of the public utilities; and the cost of making such investigations, when conducted by the utilities themselves, or by municipalities or individuals, is so large as to be prohibitive. Regulation therefore fails.

A workmen's compensation act, which will protect society against the annual wastage in human forces suffered in industrial pursuits, calls for the earnest consideration of the Bar of Alabama; and the time is not far distant when an equitable, fair, just and reasonable workmen's compensation act must be provided.

The condition of our agricultural development calls for the earnest consideration of a trained body of experts, and necessitates the interference by the State government itself with legislation which will encourage the development of our agricultural wealth, so that it shall be placed at least on a parity with the normal state of the union.

Farmers' banks are institutions which other States and other countries have found useful in encouraging the development of our farming lands, and in enabling farmers to successfully establish themselves upon sound financial bases.

I shall earnestly recommend the establishment of a permanent commission by the State, to be composed of a chairman and such number of assistants as found necessary, appointed by the Supreme Court with sufficient appropriation, and charged with the duty of making a comparative study of the legislation and institutions of every State in the Union, as well as of the legislation of foreign governments, and of selecting for Alabama those laws which have been tried and found useful in other States and governments, and preparing bills to be presented to the Legislature at its meetings. Such a bureau, if composed of men of ability, would draft laws, after giving the same careful study; and this study would tend to eliminate the defects that now are found in the hurriedly-drafted legislation enacted under the present system. This bureau could be empowered to study and draft, for members of the Legislature, legislation on any particular subject which the members might desire.

Men selected to the Legislature do not always possess the experience and knowledge necessary to a comprehen-

sive and scientific understanding of the subjects upon which they legislate. They do not have the time to study even one question. Many of the bills are hurriedly written and enacted into law without mature consideration or study of its effect in operation. A bureau such as I have mentioned could make available to the members of the Legislature the labors of bureaus of other States, where such bureaus are in actual operation.

In conclusion, I shall again crave your pardon if I repeat the statement that Alabama will never attain to the position, to which she ought to aspire, until illiteracy and ignorance are banished from our borders.

The President :

I am sure that I express the sentiments of the entire Association present when I say that we are very much indebted to Mr. Ullman for his instructive and thoughtful paper; it shows a most careful consideration of the subject. In view of the fact that the luncheon hour has arrived, the discussion of the paper will be postponed until the afternoon session. The chair will now entertain a motion to adjourn until 3 o'clock.

On motion the Association then adjourned until 3 p. m.

AFTERNOON SESSION.

The meeting was called to order at 3 p. m. by the President.

The President :

The next order of business is the Report of the Committee on Jurisprudence and Law Reform, by the Chairman, Forney Johnston, Esq.

Mr. Johnston then read his report as follows:

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the Alabama State Bar Association:

The only matter which has been specifically referred to this Committee, is a communication from the Commissioners on uniform State laws relative to the proposed uniform act regulating divorce and the annulment of marriage, recommended for adoption at the conference of Commissioners on Uniform State Laws in August, 1907. The material feature of this proposed act which presents possibilities for comment in Alabama, is the provision for the annulment of the marriage status on clearly appropriate grounds, to which, of course, should be added appropriate provisions recognizing the fact that racial alliances are prohibited in the South. The bill also provides for divorce from bed and board on grounds differing in some respects from the grounds for divorce a vinculo. The chief benefit from the standpoint of uniformity lies in the provisions relative to the effect of foreign decrees in divorce cases.

It will be recalled that at the 1915 session of the Legislature, Section 3895 of the Code was amended so as to provide for a divorce a vinculo when a wife, without support from the husband, has lived separate and apart from the bed and board of the husband for five years next preceding the filing of the bill, and has in good faith resided in Alabama during that period. The Alabama amendment of 1915 enlarges the provisions of our former statute and of the proposed uniform act in respect to abandonment but it is in no sense inconsistent with the general principles embodied in the proposed bill as to which uniformity in the several States is desirable.

It is clear that statutory provisions should be adopted in Alabama providing for annulment of marriage, for the

reason that in many cases a decree of divorce, which takes effect from the date of the decree, and not from the date of the marriage, is inadequate. The provisions of the uniform act as to jurisdiction, service, etc., are desirable, and it is the recommendation of this Committee that a bill in substantially the form of the proposed uniform law, with the changes above suggested, be drafted by the succeeding Committee on Jurisprudence and Law Reform, for submission to the next annual meeting of this Bar Association for its approval and for its recommendation to the Legislature of 1919, for passage. Uniformity in the matter of the laws regulating the annulment of marriage and divorce is necessary to the preservation of the policy of the several States in the matter of domestic relations. Unwarranted liberality in this respect in the laws of certain of the States has resulted in an abuse of the status of citizenship of the State of the domicile of one or both of the parties.

THE TASK FOR THE ALABAMA BAR.

The disinclination of the present generation, too busy for abstract thinking, to work out for itself the overwhelming present reasons for maintaining the principle of State integrity which has formed the bony structure of the American system of democracy and liberty; the confusion and uncertainty in the public mind which follow the suspension for war purposes of ordinary limitations on the Federal power; the break down of our tax system restricted by constitutional limitation to an ad valorem basis; the tendency to forget the basic principles required for democratic government in a desire to further administrative efficiency; the necessity that we should give consideration to economic and industrial adjustments, all place a peculiar obligation upon the legal profession in Alabama which can be discharged only through a constructive program calling for careful thinking of a high

order and a propaganda comparable to the days of the Federalist.

CENTRAL ADMINISTRATION, COST, AND CIVIL LIBERTY.

A decided majority of those who subsequently proved the brilliant leaders of the Confederate forces were opposed to active war upon the Federal government. Many held commissions under the flag but, as loyal citizens, they shouldered Southern arms when their States, through the constituted authorities, withdrew from the Union. After that, no difference in political opinion was reflected in their gallant action. In this great crisis now upon us there has never been ground for difference of opinion. The American government acted when no other course was debatable. Since that grey day in our history every dollar and every drop of blood in Alabama is, under the Constitution, enlisted for the war. Only through unqualified recognition of this fact, with its grave consequences, can the State assert in time of peace that sovereignty under the Constitution, which, in time of war, rests exclusively in the national government representing all of the States. This is Alabama's war. Sibert of Etowah, stands nearest the fighting line in command of the American troops. Alabama boys are under arms, in camp, and on the march. Under Gorgas of Tuscaloosa, is the organized medical skill of the nation to guard the vast army now in the making. The Senators and Representatives from Alabama are voting incalculable resources in evidence of Alabama's part in the struggle. As a sovereign State acting through its representatives, Alabama is asserting its sovereignty in the method assured under the Constitution in time of war and no citizen can repudiate its action and be loyal. In consenting to the abrogation of local rights, to the suspension of State control over the interchange of commodities and the agencies of transportation within her borders;

in submitting to direct taxation which will cut to the bone; in freely assuming her part of the burden, the State is not surrendering, but is asserting, her sovereignty under the greatest of all treaties—the Constitution of the United States; is asserting the right to have her citizens protected against murder on the high seas, to establish her right and the world's right to peace. To oppose these things is to stand in the way of the high prerogatives of the State, as well as to be guilty of treason to the Nation.

But the people should never be permitted to forget that these conditions arise out of the war, and are based exclusively upon the provisions of the United States Constitution relating to war. To use them as precedents or subterfuges for the permanent intrusion of national interference in local matters in time of peace involving an essential surrender of State sovereignty would be as treasonable as to oppose the State's ready acquiescence in these measures in time of war. Making unfair profit out of war has given rise to the discreditable term, "profiteering," which is applicable whether that profit be financial, or political. Capital and labor and political faction should bear this in mind.

The American colonies were organized by States, enjoying their separate autonomy direct from the Crown. The American system is based on the administration of local affairs through local action. Administrative law and constitutional law have thus acknowledged the same limitations. Local self-government is an Anglo-Saxon principle which became possible in England on account of her insular position, in contrast with the centralized type of administration forced on the free States of Europe by the external pressure of powerful neighbors. The surrender of self-government in local matters to national authority is justifiable only by military necessity or like emergency, by the fear of war, by the lack of the ability for self-government or the absence of a spirit of liberty. The principle of "local self-government" embodied in the American sys-

tem has been justified after too many centuries of political experience, by the blood of too many patriots, to be discarded as a trite phrase. That centralized efficiency, which works under a Prussian lash in Europe, is the result and the prophesy of War, civil or external.

The difficulty and the danger for the American Bar to realize and make plain is that the fine democracy expressed in the phrase "local self-government," is not only sound politics and the only condition to which liberty loving people capable of self-government should submit, but is the last word, in time of peace, in simplicity, efficiency and economy of local administration. It stands the test of efficiency today as surely as it responded to the indomitable demands of our political philosophers of the past. To surrender it for the waste, the injustice, the lack of flexibility and sympathy with local necessities and traditions, which is characteristic of an attempt to centralize local regulation would be to sacrifice the peace usages and customs of democratic America for a condition that is the horrid progeny of war—tolerated in time of peace only in countries where self-government is passively surrendered by the people or is excluded by the fear of war.

The mobilization of men and resources for this great enterprise, which has severely tested the administrative capacity of an Executive of consummate ability, demonstrates before our eyes the expediency of State lines in time of peace. Carried on with a democratic sympathy as inspiring as the forbearance, and then the determination, with which the nation has approached the status of war, we nevertheless bear witness to the waste, the unavoidable injustice in financial and physical burden, the overwhelming submersion of individual freedom and initiative, which necessarily result where a great centralized administration is in action.

In other times, the idea of unnecessary Federal encroachment would not have required the earnest opposition of the constructive thinkers of the nation. The civil

war left the Constitution unchanged in any provision relating to the limited power of the national government. On the other hand, ten amendments have been adopted to limit and restrict the national authority to the expressly defined powers contained in the original instrument. Not until the adoption of the income tax amendment were the peace powers of the Federal government enlarged or extended. That change was understood to be largely in form rather than in substance, permitting the income tax to be levied and collected directly, rather than by apportionment to the States according to population. There is grave doubt whether a serious mistake was not made in thus surrendering exclusively to the national government the most direct, the most just and perhaps the most productive item for taxation, without reservation of some equitable division to the States, as hereinafter suggested. The point here is that if the principle of local self-government is voted into the trash heap by the American States by the adoption of any amendment which fixes suffrage or police regulations within the States, and supports that assumption of power with the surrender of revenue necessary to administer it, the next step will be complete centralization of administration and legislation, elections by popular majorities, reducing the smaller States to provisional vassalage, and local elections by voters whose qualifications are fixed by Congress.

In recent days grave and far-reaching efforts have been set in motion to police and centralize the administration of local affairs.

With the tremendous organization for war, with vast numbers of men and incalculable resources drawn into the Federal service, the restoration of a normal equilibrium between State and national governments will be difficult at best. The treaty of peace with the Teutonic allies will find the United States with the greatest governmental organism any democracy has ever known. It will require the combined efforts of an ultra democratic administra-

tion, and the earnest insistence of the people, awakened to that necessity by the constructive legal minds of the nation, to restore clearly the land marks upon which this government and the happiness and freedom of opportunity of all of its people are founded. This grave difficulty is being increased by the thoughtless energy of factions, minorities or other misguided people, who are attempting to force permanent regulation of essentially local matters by the machinery of the national government. They are perfectly willing to sacrifice an important principle of constitutional government to the desire for the imagined efficiency of a centralized administration. This, of course, would destroy local authority and flexibility, make it obligatory on the Federal government to enforce the same regulation in Alaska and in Alabama and maintain an enormous and costly organization to administer the idea: all this notwithstanding a necessary duplication by the State of like agencies, responsive to local laws and better fitted to the local necessity.

Much of this misguided action is being pressed under the false guise of military expediency; but even before the entry of the United States into the present war, national events marked a direct channel toward an unnecessary and unwarranted assumption of national authority. Significant among Congressional enactments were the morally commendable, but politically destructive child labor law, denying the privilege of interstate transportation to commodities produced within a State consistently with its laws and in no sense constituting an act of interstate commerce, or an act accessorial to such commerce—a law effectually destroying the privilege of the people of the several States to settle an important internal question according to their varying necessities. No less significant, and much more dangerous as a precedent because of the fact that its religious or factional phases prevent the people as a whole from recognizing its constitutional and political aspects, have been those acts of Congress such

as the Reed amendment or the proposed prohibition or suffrage amendments which have destroyed or propose to annul the policy of the several States as to police or internal matters wholly within their jurisdiction—not as war measures, but as deliberate assertions of Federal authority in time of peace. The consequences of opening local policies such as suffrage qualifications and police regulations to a fixed, inflexible and dogmatic federal rule would be an unthinkable surrender of political liberty, which it is the duty of the Bar to make clear to the people without reference to the final conclusion to be reached within the States upon those issues.

The defeat of federal amendments of that character should be the common aim of all advocates of constitutional liberty, pitched on a plane that would exclude any idea of factional advantage.

These destructive tendencies, immeasurably fortified by the necessarily centralized action of the nation in prosecuting its part in the great war, require the profound consideration of the legal minds of America, if we are not to surrender a splendid system of free government, responsive to local needs, economically administered, leaving the great fields of local taxation free to meet the varying necessities of the people of the several States, for a straight-jacket of central and bureaucratic administration wholly unsuited to our requirements, or to our free development.

A clear and solemn duty rests upon the legal profession in America to keep alive in the consciousness of our people the fact that loyalty is due to the spirit of our government and that the consideration to the people for their national allegiance is the solemn compact of the nation to respect the "absolute liberty of the people of each State to govern themselves in all their own local affairs according to their own free opinions and will."

Without this assurance, it is certain that the Union would never have been formed, and without substantial

fidelity to that obligation it cannot be maintained in its high integrity.

In the unanswerable logic of the statesman selected by the President to carry the message of democracy to the Russian people:

"This country is so vast, the difference in climate, in physical characteristics, in capacity for production, in predominant industries and in the resultant habits of living and thinking, are so great that there are necessarily wide differences of view as to the conduct of life; and to subject any section of the country in its local affairs to the dictation of the vast multitude of voters living in other parts of the country, would create a condition of intolerable tyranny; and to use the power of the nation to bring about that condition would be to make the nation an instrument of tyranny. It is needless to argue that this would ultimately destroy the nation. It is the free adjustment of the separate parts of our country, the unchecked opportunity of each community to live in its own home, according to its own opinions and wishes, that has made it possible for us to unite in maintaining the power of the nation for all national purposes."

THE GROWTH OF PUBLIC EXPENDITURES.

Of all public fiscal problems, the question of State and municipal expenditures is least subject to helpful generalization. The general problem of legislative waste is wholly administrative and beyond the scope of jurisprudence or the functions of this Committee, but one tendency of municipal financing suggests definite legislative or constitutional restriction which should be considered and matured in Alabama. We do not mean to suggest that, with desirable changes in the power of classification, to be referred to later on, our revenue should not prove adequate to a scrupulous administration of State government. The entire body of the people is becoming accustomed, through

force of current events, to unusual and direct contributions to public necessities. Assuming a just restraint by the nation in the exercise of its taxing powers after the war, there will remain available for State and local uses defined channels for raising large revenues from taxation, both direct and indirect, for application on the constantly increasing demands for public expenditures, but unless these demands are radically limited, or unless they are met by current taxation, rather than by successive issues of bonds, our cities will be in time hopelessly overwhelmed with outstanding securities and demoralized by the ability to pass on their waste and burdens to the next generation. A partial remedy is the adoption of the principle of "pay as you go," by placing an effective constitutional or legislative limitation upon the issue of bonds for public purposes, except for works of a plainly permanent character, or unless a specific obligation is imposed on the issuing authority to amortise the issue by taxation during the life or usefulness of the expenditure.

It cannot be said that there has been general waste or corruption in recent years in the expenditure of moneys realized from public securities, but municipal and State needs tend constantly to outstrip available resources. It is, accordingly, essential that the principle of current taxation on a sinking fund or serial bond basis must be employed in greater degree, and thus operate as a restraint upon the people in voting bonds for expenditures which are experimental or are obviously not permanent in character.

TAX AMENDMENTS.

The present insuperable obstacle in Alabama to permanent financial relief is that provision of the Constitution which deprives the Legislature of any power to classify property for taxation on different bases. All property taxes must be levied on an advalorem basis and at the

same rate. Taxation in some of our cities amounts to as much as 2.8 per cent. or more. It is obvious that interest-bearing bonds, bills receivable and invested securities of that character could not stand taxation on so high a basis, and that they must be exempted entirely, as at present, or destroyed by taxation. Numerous other classifications are necessary to any satisfactory adjustment. This can not be accomplished under the ad valorem requirement of the constitution, which has long since become unsuited to conditions in which corporate and intangible property constitutes our most valuable and extensive item of taxable wealth. As long as the State was exclusively agricultural, with property items limited to lands, slaves, and obviously accessible personal property, the ad valorem basis was fairly acceptable, but under present conditions a constitutional change is indispensable.

The assumption by the Federal government of the power to tax incomes complicates a final adjustment of State tax systems. The elaborate machinery for levying the income tax should not be duplicated and it may be practicable for the State to use the finally accepted schedules filed under the Federal law as a basis for income taxation for State purposes, if the national government will reduce its rate of levy. Inheritance taxes, which should, of course, find a place in any complete scheme of taxation, should be payable to the State, as the yield as a whole would be fairly even in the State and form a proper basis for financial estimates, whereas if payable into the county treasuries the resulting revenue would be subject to marked fluctuation. The frequent difficulty of fixing the situs of inherited property for the purpose of taxation, suggests the one additional particular in which, theoretically, there might be worked out a satisfactory blending of State and Federal machinery; under which, for instance, income and inheritance taxes might be collected by the national authorities and equitably divided with the State.

We do not consider this report as the appropriate place

for any more detailed suggestion in the broad field of State taxation. The items mentioned are those new features necessary to be borne in mind by the profession when the opportunity for reconstruction shall arrive. A change of base on many existing taxable items is, of course, obligatory.

JURISDICTION AND AMERICAN INDUSTRIAL RELATIONS.

It is singular that for a century and a half the American people have devoted themselves to the development of a political democracy perfect in theory without suggesting the corollary that the final solution of the industrial question is in the direction of an economic democracy. This conviction, destined, in the opinion of the Committee, to become the basis for far-reaching departures in the jurisprudence of industrial relations is rapidly crystallizing in its economic aspects; and, as a predicate for heavy draft upon the constructive resources of the legal profession in this State, this Committee submits a brief comment on the question of industrial legislation.

We have a fixed desire to avoid the temptation to be dogmatic, but the conclusion is none the less certain that the industrial fabric is proceeding to an adjustment which is as necessary as it is inevitable. Abnormal concentration of wealth on the one hand, and an apparently unlimited ability of organized labor to direct legislation on the other, compels an industrial adjustment which the profession in Alabama must be ready to meet if the State is to be kept free of the forces of political and social disintegration which had been put in motion in England and ceased only when Great Britain was regenerated by her own blood.

The breakdown in our economic organization has not been in the individual producer: where division of labor, efficiency, and order, have been developed to a high degree. It lies in production, in the industry as a whole,

where duplication, lost motion and destructive competition have been the rule. Industry as a whole has been entirely lacking in co-ordination. The result has been a growing annal of disaster, unemployment, and a waste as complete as the ravages of fire. It is now definitely recognized that some kind of centralized or industrial parliamentary control, following the lines of the German or of the Cartel system, but thoroughly subordinated to our democratic system would be beneficial, provided that any resulting market monopoly is not used to raise prices. The partial remedy against this harmful result in England and on the continent has been a combination of consumers in the form of co-operative purchasing societies, or associations for common manufacture or common sale. Such societies, maintained in England by the working people, are now estimated to embrace one-fifth of the population, with an annual turn over of \$550,000,000. They are accompanied by a great variety of rural or industrial credit systems wholly lacking except in the germ in America. If our industry is relieved of the unreasonably narrow restrictions which force wasteful duplication in the guise of preserving competition, with statutory or practical safe-guards against the abuse of the privilege of agreements to avoid such waste in capital and effort, a constructive step will have been taken.

This principle, long since accepted by economists, must be hammered into law by constructive minds in Alabama. Attacks on industrial progress and efficiency, such as the radical bill which happily failed of passage before the Legislature of 1915, are obsolete and should give way before enlightened study of modern economic tendencies.

A further salutary agency which must be given serious consideration and ultimately some place in our industrial jurisprudence if we are to avoid aggressive sympathetic legislation, is the extension of the principle of insurance to the mishaps and casualties which are disastrous and unforeseeable by the individual, but calculable as far as the

mass is concerned. On this principle rests the ultimate happiness of the man with small resources and without the training or ability to make sufficient headway for himself and his family to meet the innumerable contingencies that bring disaster and a permanent loss of self-confidence. This economic process is known as the "averaging out" of human calamity by the agency of insurance.

The evolution of industry and its preservation from a socialism that is essentially destructive of individual developments lies in the direction of democratization. Fortunately for industrial efficiency, and for the welfare of the people engaged or dependent upon industrial pursuits, the pendulum is swinging in that direction, and if our legal minds do not adhere too rigidly to Bourbonistic ideas and confine themselves too haughtily to precedents, our jurisprudence will respond to modern economic tendencies just as the Supreme Court of the United States has unconsciously responded to the crystalized sentiment of the nation in overturning settled constructions of the Constitution.

This Committee urges upon the profession in Alabama a recognition of the fact that the law is a part of the living social fabric. When the profession, with a haughty eclecticism, confines its interest to the substantive law in the abstract, and declines to recognize the public necessity that jurisprudence should descend "to the level of each day's common need," then it is that the profession fails in its purpose and invites factional legislation by organized interests, incapable of abstraction and pursuing a strictly selfish purpose.

THE QUESTION OF MINORITY RULE.

The final suggestion of this report for constructive reflection by members of the Bar entrusted with the work of what may be termed constitutional jurisprudence, grows out of what seems to be an inherent tendency of Legislatures to respond to continued pressure of aggressive

minorities organized for a single purpose and disposed to subordinate all other public interests to that end. The principle of loyalty to political authority in America is majority rule. Any deflection from that doctrine, any suggestion that minorities, factions, special interests, whether of capital or labor, shall be permitted to exercise a predominating influence in the government of the majority, arouses a resentment that is as revolutionary as the Spirit of 1776. If any tendency in the best governmental system on earth could be said to constitute a menace to our institutions, it is this problem of the successful impress of minority views upon legislation resulting from organization to secure legislation on principles not broad enough to become party issues and invite a corresponding organization of opposition. Until the successful minority of American manufactures became so aggressive in tariff differentials as to force the tariff as an issue before the people, the minority had its will, and its momentum once established carried on for many decades. Similar instances have been multiplied in recent years: the singularly effective power of labor, frankly organized, not for the general welfare, but to stress a specific interest, and the profound and coercive influence upon legislation of the earnest and capable ranks organized on other single issues, such as suffrage and prohibition, and recognizing no other legislative necessity, demonstrate the efficiency of organization in directing legislation, and form the basis for the suggestion that to avoid permanent divisions of our people, as well as reactions which mean loss motion, friction, and a subordination of political efficiency, there should be some method short of the unlimited referendum to let the majority indicate its conclusions on questions coercively pressed upon the Legislature by organized minorities.

This report is respectfully submitted with the knowledge that the members of the Bar will do their part in the important work of general and constitutional jurisprudence

ahead. The chairman, in justice to the other members of the Committee who have not had the opportunity of discussing these suggestions before the meeting, must assume exclusive responsibility, with the hope that these views are not out of line with the sentiments of the Alabama Bar.

Respectfully submitted,
FORNEY JOHNSTON, Chairman.

The President:

I overlooked the fact that when we adjourned for luncheon the discussion of Mr. Ullman's paper was postponed until after reassembling. I now offer, before we take up any further business, an opportunity to any of the members present who may desire to comment on the able paper read by Mr. Ullman under the rule of ten minute speeches, the whole debate not to exceed one hour.

Mr. Latady:

Mr. Ullman's paper is an exemplification of the old adage that a man's whole happiness comes of his own greatness, what he thinks of his merits. If a man places an estimate of his deserts at nothing, he has the world at his feet. I had no idea that people could be so happy with so little. We have no coal, we have no iron, we have no cotton, we have no sense, we have no education—the gentleman omitted to say we have no whiskey. May we duly thank the Lord that we have no taxes. Personal experience only is to be included. Which reminds me that a few years ago when the tax commission started in Alabama an old gentleman came into town and said this tax commission is the greatest thing the State of Alabama ever had. I thought they would all come around to find out whether I paid enough taxes, but this year the commission has found 1500 sheep I did not know I had. Gentlemen, point them out to me, I will be glad to pay taxes on them. Really to listen to the statistics that we have been piling up in the State of Alabama, they ought to be spread broadcast

so people will come here and be happy on so little. Surely if ignorance is bliss 'tis folly to be wise, and I am opposed to any change in the present system.

The President:

That is very nice, we are all edified by the gentleman's speech. If other gentlemen desire to be heard we shall be glad to hear from them. It is well that these papers should be discussed or criticized, or in any other way.

Mr. Whitaker:

Ideas have been brewing in my mind for several years. I am not sure it behooves a comparatively young member of this Association to make criticisms; but to put it another way, that it sometimes happens that a man coming into a business or organization with a fresh mind, so to speak, can see things that those travelling in the rut for years do not notice. Just as most improvements in farming methods, for instance, have been made not by the professional farmers, but the men who came from the city or town who make it a study. If I may make a few criticisms in that light, it seems to me that we do not accomplish what we ought. An organization composed of the men who belong to this organization, embracing the best brains of the State of Alabama by natural qualities and training it seems to me ought to take more active part in the framing of our legislation particularly at the present time and the years to come in the immediate future. The whole world is going through an economic, social and industrial change, as Mr. Johnston's paper suggested. The mass of bills passed by the last Legislature, particularly the bills made out to reform legal procedure and administration of justice, show that the public today are demanding some sort of reform. Now the lawyers as a body are better trained than any other body of our citizenship for directing that. The mass of decisions which our Supreme Court has handed down in recent years construing the legislation of our State, shows to me the necessity for drastic reform of the Legislature. Our last Legislature

with the best of intentions attempted too big a job, they bit off more than they could chew, and it remains to be seen just how much of that reform in legal procedure is to stand, how much of it is going to accomplish the purpose for which it was made. That Legislature attempted what, so far as I know, was an innovation in travelling around the State during the recess getting suggestions from the public and lawyers as to reform, but in the limited time which they had all that they could do was just to add something. Legislation such as they attempted and did pass ought to be carefully considered, and if approved should be spread broadcast subject to criticisms from all sorts of people. No one man can suggest legislation of that character; some of us have a faculty of thinking up those things, others of putting them in concrete form which will say what it means and means what it says without future wrangling as to construction. It takes a trained mind to draft accurately legislation, and no body of men in this State possess that training except the lawyers, and it seems to me, therefore, that as a body we have not taken an active enough part in the drafting of essential legislation. Of course it is impossible for every detail of legislation to be submitted to criticism, but the main bills, bills for instance the Workman's Compensation Act, and the reform of court procedure such as our last Legislature attempted it seems to me could and should be framed by the lawyers, and as Mr. Johnston's report suggested, if the next committee prepare a bill regulating marriage and divorce—there is a great deal of that sort of legislation that could be prepared by committees of this Association. They should be prepared at one meeting and submitted to the next meeting for criticism and suggestion, maybe referred to another committee, and then by the time the Legislature comes we would have something worth submitting, and if the full force of this Association could be united upon such legislation it ought to be passed. With that in mind, I want to offer a resolution: That the

Committee for the ensuing year on Jurisprudence and Law Reform when they have drafted the act for regulation of marriage and divorce, at the expense of this Association have copies of that act printed and mailed to the various members of the Association at least thirty days prior to the next meeting so the members can have that act in mind and have an opportunity to study and criticize it. I therefore make the motion, that the Committee for the ensuing year, if they deem it advisable, have copies printed and mailed to the members of this Association at least thirty days before the next annual meeting of the Association.

Judge Clayton:

I beg the indulgence of the members of the Association for a few minutes. The gentleman who has just taken his seat uttered some observations which are in their nature strictures upon the last Legislature. I did not take the floor to combat the popular disposition to criticize our Legislature. However, we ought to give the Legislature, particularly the last Legislature, credit for some good things that were accomplished and others that were attempted. I have some sympathy for a member of the Legislature of Alabama because in my younger days when I did not know very much I was unwise enough to be a member of the Legislature of Alabama myself. Something can be said in mitigation of their sins of omission and commission. In the first place the Legislature is allowed a very short time for consideration of important matters. Then, each member of the Legislature, I take it, has considerable local legislation to handle, matters concerning his immediate constituency. And again, aside from the shortness of time there is the lack of just compensation. That brings about the character of the personnel of the Legislature very largely. You will find sometimes a very capable legislator there, and sometimes a very able lawyer, but as a rule when you find a man of unusual capacity in the Legislature he has not

gone there out of any sacrificial spirit, but he has gone to take care of some particular interest. Of course sometimes good men do go there, men of ability and capacity who do not go to serve special interests. Yet I would not make any criticism of a legislator who goes there to take care of a particular interest because we live under a popular representative form of government, and every man and every interest is entitled to a "fair show for his white alley," and I make no criticism for that. But sometimes it is carried a little too far in our Legislatures and in the Congress of the United States. By way of digression, I remember some years ago at Washington there was a gentleman who was said to be the representative of the Bagging Trust, a very fine man and he appeared before the Committee to argue in the interest of the bagging industry whenever that subject came up. At the next session of Congress he reappeared, but as a member of the House of Representatives and not in his former capacity. So if Alabama has been guilty of that sort of thing, she has not been without example. This thought ought to occur to the people of Alabama, that the personnel of their Legislature averages just as high, and higher too, than they seem to be willing to pay for. Of course you can go into any community and find a cheap lawyer to take your case for a few dollars in cash, provided you will throw in your Barlow knife or some other convenient small property. Of course, the sensible man will go and employ a reputable lawyer like our friend Sims or Ad Smith and pay him a reasonable fee. Now I am not going to mention names, but I have in mind some members of the last Legislature who would not be intrusted with any important matter at home, and yet the people at home sat down and let the incompetent and unworthy go to the Legislature at Montgomery, and then you and I and all the people have to do the best we can. So much for our Legislature. It has done about as well as the people of Alabama have been willing to pay for. Then

the shortness of time for legislative work handicaps them.

The idea in my mind when I arose was to mention some of the things that the last Legislature did, not to mention all the good things that they did because that would trespass too much upon your time. Take the matter of expert testimony in the comparison of handwritings. Our Legislature of Alabama caught up with the procession in many States of the Union, and with some of the courts State and Federal. Some of the Federal Courts did it without congressional enactment, but Congress did so enact as to allow the jury to examine and compare proved or admittedly genuine handwriting of the accused with the writing in dispute instead of leaving it to the opinion of some expert. As lawyers we all know the danger of depending upon expert opinion testimony as to handwriting—you can hire too many experts. The Legislature of Alabama following Congress has abolished the rule that obtained in Alabama and many other States, and has allowed the jury to see the disputed handwriting and form their own opinion; and why should they not? Now as to the matter of reform of judicial procedure. We all know what our substantive law, the application of common law principles to our growing society and our industrial life, the application of old principles to the new condition is sometimes best had by way of legislative enactments. The people all demand that our substantive law keep up with the demands of this progressive age, and the legislator generally attempts to do his part in this respect. But the people are not acquainted with the adjective law. It is only the lawyers who are acquainted with that branch of the law. Therefore, it is incumbent upon the lawyers to see that the adjective law keeps pace with modern development so that court house business may be dispatched as speedily and as economically as possible. With that view in mind I want to commend Brother Davis here, who was a member of the last Legislature, for an excellent act, and I would that

it had passed as he presented it originally, that had for its object to authorize by positive law, the Supreme Court of Alabama to make rules governing procedure in our State Courts. That is not an untried field in legislation because we know that the Supreme Court of the United States was authorized by act of Congress to make and formulate rules governing equity cases, and we know that it is a part of the procedural law of the country and has simplified the trial of equity causes very much and rendered the administration of justice in equity causes with Federal Courts easier than if these rules had not been made. Now then the American Bar Association, as those of us who are members of it know, has endorsed a bill to allow the Supreme Court of the United States to formulate and promulgate rules governing procedure at law. In accordance with that idea, my brother Davis as Chairman of an important committee in the last Legislature formulated his bill and introduced it, and if that bill had been passed as its author wanted it to pass the Supreme Court of Alabama would have simplified the rules of procedure and practice very much. But what was the fate of that bill? When it was about to be enacted into law, at some time in the proceeding, some man offered an amendment, which was adopted, in the very end of the bill, in the tail of the bill, that in effect defeated the whole purpose of the bill—provided that nothing in this act shall be so construed, I think that is about the language, as to authorize the Supreme Court of Alabama to make any rule in conflict with any statute of Alabama. That emasculated the whole law, because the Supreme Court was required to recognize as of force all of these statutes, all of the archaic rules provided for by statute. It was, therefore, rendered impossible to formulate satisfactory rules of procedure governing cases at law. The act is so unworkable that the Supreme Court of Alabama, so far as I know, has not attempted to do anything under it. I want to commend our Brother Davis for that act, and in the next Leg-

islature if he can get that bill passed stripping the fatal provision from it, we can have a law that will do very much towards simplifying our procedure.

I beg your pardon, Mr. President, for intruding my views, but I felt that I owed that much to Brother Davis, and perhaps something to the last Legislature.

Mr. Fitts:

I desire to approve very largely what Judge Clayton has said and to speak more broadly upon the subject of our lawyers in Alabama as compared with other sections of the country. Our Bar Association for many years has had the habit of self-introspection, and criticisms are made of the condition of affairs in Alabama, but the more I go abroad the better prepared I am to say that the lawyers of Alabama are the best lawyers in the United States. In addition to that, our Legislatures compare favorably with any legislative body in the United States. I think that they compare favorably with the Congress of the United States, and if we could secure prompt legislation, more frequent assemblies of the Legislature with somewhat longer time to thresh out and adopt matters coming before them, that would be a great advantage to the State. I think in four or five years from now Alabama will be one of the most forward-looking States so far as the practice of law is concerned, for attorneys in the preparation of cases; the ability of nisi prius judges and the ability of attorneys to bring their cases to trial; and I say in this respect they are superior to the lawyers I have met anywhere in the United States. When it comes to the practice and procedure in the Federal Courts in Alabama, and with respect to the three Federal Judges, and the conduct of affairs in the three Federal Courts, I can say that they take rank among the first in the United States. When it comes to the Supreme Court of Alabama I am going to deal with equal candor. The Supreme Court of Alabama is not measuring up to its high estate. That is true, and it is true largely because of adhering to a system of pro-

cedure within the court that is absolutely ruinous to the usefulness and proper function of any court of last resort in any country. I have no criticism to make with respect to the body of men who at present constitute the Supreme Court of Alabama. They are men of good ability, but under the system by which they proceed to dispose of cases on appeal in Alabama there can never be a satisfactory result. The Appellate Courts in other sections of this country, both State and Federal, regard the system that prevails in the State of Alabama when described to them as simply a relic of a by-gone era. A judge of a court of last resort, when he gives an opinion, ought to be able to state his case orally, and to state the principles that he is deciding and the reasons upon which he is deciding; he ought to state the findings of the court and the reasons of the court, and no court of last resort can do that until they have debated that case among themselves. If we continue in the State of Alabama to have a one-man opinion, we can never lift the opinion of the Supreme Court of Alabama to that position which they formerly occupied and which they ought to occupy among the decisions of this country. The way that opinions are written and arrived at in other jurisdictions is for every member of the court to participate in the decision of the case, and the judge who renders the opinion is ready and able to state it orally from the bench, and state wherein his brothers differ and dissent from it. The idea of a decision of the Supreme Court of the United States being rendered without an examination by the court, without the court knowing the details, without each and every man having discussed it with every other man on that court, is simply unheard of and unknown, and such procedure could not maintain any standard. Take the Appellate Courts, Federal Courts throughout the United States—they hear the argument, discuss the case, and come back to the court every man acquainted with the case, every man knowing what he has decided and prepared to state it. I tried the Quaker

Oats case in Chicago before a court made up of three able judges. There was discussion for three days, and at adjournment on the third day they said we will decide this case at 11 o'clock tomorrow morning, and at 11 o'clock they came as a divided court, but every man prepared to state what he knew about that case and where he differed with every other man, and each knew every intricacy of that case.

The Supreme Court of the United States takes a case, they try it in the consultation room, and when they deliver the opinion every man knows the case, knows the record, and the man who renders the opinion of the court can state it orally, knows every phase of the case, so a watchful and prepared and up-to-the-moment bar of the county can observe whether he sees and understands that case. Now, if it be true that in the Supreme Court of Alabama there is a large number of cases that are so routine in their character, so of the ordinary in their nature, so uninteresting in their law points—although every case is interesting to the lawyer or to somebody, and a lawyer's lawsuit is as close to him as the garment he wears; he is interested in it beyond measure—but if it be true that there are a large number of cases so of the ordinary that they stand apart and they are to be written and decided as a one-man opinion, then they ought to be put aside and treated in that way. But the important cases, it seems to me, ought to be listed for oral argument, the arguments ought to be heard, the court ought to sit there and understand the case as is done in the Federal Courts of the United States. They ought to become a debating society among themselves to know the intricacies of the case, and when they come to giving the decision it ought to be the decision of the entire court, every man understand what he is deciding and what is being written and what principles of law are being decided. Until we get out of the rut in Alabama, and escape having the court go along and deliver a one-man opinion, we will never lift the standard of the

Supreme Court of Alabama back to that high position that prevails in the other States of the Union where they have long since thrown to the scrap heap this old system of one-man opinion. It is inconceivable to me that the judges themselves do not see and realize that they could do more credit to themselves, more credit to the court, more credit to the law, and raise and elevate the standard of the State by changing the system under which they decide cases in the Supreme Court of Alabama. I think with that single, solitary criticism we can look about us and say that there is nothing the matter with Alabama. When I heard Mr. Ullman's paper that we are the lowest in everything, that we cannot even grow cotton, that the taxes seem to be pretty high here, but he says they are not high enough, and when I saw his great big system of tabulating to show in what bad condition we are, it did nevertheless occur to me that Alabama is in a pretty good condition, that it ranks pretty high when compared with the other States and the other lawyers with whom I come in contact. Then I heard Judge Clayton come to the defense of the Legislature of Alabama. I believe that his remarks are timely and well taken. When I remember the character and ability of the lawyers in Alabama, the way in which cases are prepared, the way in which the principles of the common law are known and understood, the way in which the separate equity system which is the very breath and inspiration of a true administration of justice has been maintained and kept apart in its old original powers in Alabama, I was thankful that Alabama had not degenerated, thankful that the attorneys by whom the law has been practiced have kept up, thankful that I can say conscientiously after having been in other States and seen the best lawyers in other communities, that the Alabama lawyer compares more than favorably with any lawyer in any community in the United States; but I do think that I would be neglectful of this occasion and opportunity to point out what I believe is a great error in the way the Supreme

Court destroys its fair name did I not mention to the Bar Association the fact that I do think and believe that we can never have the decisions of the Supreme Court what they ought to be, never have the personal delving into each case which prevails in other Appellate Courts, until they come to another and different system of handling appeal cases. When that is done, and a few legislative enactments made, Alabama will be one of the most progressive States in the Union. While it may be well to point out our defects and crudities which we otherwise might not see, I do not think when compared with other States, that we lose anything, or have anything to blush for or to be ashamed of when the comparison is instituted, Mr. President.

Mr. W. C. Davis:

I desire to say a very few words. I thank the gentlemen for what they have said in defense of the last Legislature. The last Legislature tried to do some things and failed, but that is no reason why what we did do should be overlooked. It is not necessary to call to the attention of lawyers the fact that in this State the law provides for a meeting of the Legislature only once in four years, and then limited to a fifty day session.

In normal times more questions are brought before the Alabama Legislature than are presented to the American Congress in the same four years, although it is in session practically all the time. I have been very much impressed by one suggestion which has been made, and that is that proposed legislation be considered in advance of the meeting of the Legislature, carefully considered by committees representing the Alabama Bar Association with the view that the matters may be brought to the attention of the public, especially that bills may be drawn so as to comply with the somewhat technical provisions of our Constitution. I shall not undertake to discuss in a general way what I shall undertake to do. I have merely

a request to make. I have been down there enough, and it has become rather a serious question with me. I know there are a great many critics in the State, and it is a somewhat chronic habit to criticize and cuss the Legislature, and a great deal of it is deserved, no doubt. The idea prevails that the lawyers are doing it all. You members of the Bar who want to criticize and reform us get patriotic enough to run, go down there the next time and come back after you have done your best and you will have sympathy for Mr. Carmichael, Col. John, Mr. Carnly and other gentlemen I see around here. I am satisfied it will have the effect of curing the spirit of criticism somewhat. It is a consolation to some of us, it is a matter of pride, that today, about eighteen months after the Legislature has adjourned, and after the bills that we did pass, and all we recommended did not pass—and I want to say just in that connection that Judge Clayton is mistaken about the bill that he referred to as being my bill, it was not my bill, but Committee bills, bills of the Judiciary Recess Committee consisting of nine members; all of the members agreed as to most of the bills, and eight agreed as to every bill that was reported. I want to say this, that it is a matter of pride to some of us, eighteen months after the Legislature has adjourned, and the bills gone into effect, there is not a congested docket in Alabama. Here in the City of Birmingham we were told there were ten thousand State cases on the docket, and this year there was one thousand. I don't know how many you have now. I heard a great deal about people being in jail here and all over Alabama. I have not been hearing much of the jail question recently. I believe in addition to what we gave in help to the judicial system, we gave the Chief Justice of the Supreme Court the power to direct judges, and in that way double up wherever there was a congested docket, that it has had a beneficial effect and is going to continue to have a beneficial effect of giving an early trial in Alabama, and that was not the case when we undertook to pass those crude

bills, but the best we were able to do in the limited time we were allowed to consider them. I can say for the members of that committee, that I do not believe that a body of men ever acted more diligently than they did during that recess, it worked daily and at night. We did the best we could, and I am glad that as time passes I feel assured we shall be better pleased with the record being made. I am serious in the suggestion that many lawyers in Alabama, if they will stop long enough and be patriotic enough to become members of the next Legislature, it is a fruitful opportunity for work. You can take a new crowd selected from this body and when you come back two years from now you will have some of the same troubles. It is not the work of one Legislature, but perhaps of a generation. We have made an advance in any event.

Mr. Alex D. Pitts:

To sit and listen to the remarks made before this Association you would come to think that it was a sin to be a member of the Legislature, and I have been one, I have been there a good many times, and I think we have about as good laws as any State in the Union. What is the matter with our practice, with our code of procedure? Wherein can it be much bettered? When you criticize give us the remedy. Haven't we almost the same rules of equity as in the Federal Court? Haven't we the simplest forms to practice by? I have heard it said that ours was a mongrel bird, but where is anything more simple? Let a man try to draw an indictment in a Federal and State Court; let a man start to see how he can draw a bill in equity. It is just the simplest thing. To the Honorable Chancellor So and So: Honor be to thee—and then state the case. It would look to me like that the people in this room would criticize the Lord's Prayer and file a demurrer to it! I want to say that I do think that the general court bill deserves the commendation and the praise of the whole people of the State of Alabama. I was told the other day that in Dallas County for the first time in

twenty years there was not a single negro in jail.——

A voice: They have gone off!

——No, gentlemen, they have gone to the chain gang and gone to the dirt roads in Dallas County, and we have the best roads in the State as the result of it. Men get up here and tell you about a few people in the Legislature, and the hard times and all of that, and yet they won't go themselves and sit down and criticize the fellows who do go. When we come to the remarks made by my friend, Mr. Fitts, it is very doubtful whether he is right or not. We have had the same system of considering cases in Alabama that was in vogue when the grandest jurists that the world ever saw, when Justices Stone and Brickell handed down decisions, they stood as high as any court in the United States, and the cases were considered just as they are now. That question has been up before the Legislature as to whether a rule on it should be made. After discussion it was left to the Supreme Court itself. While I am aware I do not look upon the Supreme Court Judges like I used to look upon them, but I do not look upon our Presbyterian preachers like I used to look at them, but I do think that this Bar Association instead of sitting down here in criticism that we ought to be saying something better of the people who did the best they could. I do not know whether it would be better for the Supreme Court to have discussions before or after, but I know that I have been to Montgomery and tried to see one of the judges and they always told me that they were in consultation. How they discuss it I don't know, but to hear the Supreme Court Justices tell it they work themselves to death in consultation. It is not in the matter of the way in which they write the decision, but in the consultation.

The President:

I think probably the members of the last Legislature were a little bit too sensitive about criticism. I do not think there has been anything said here today that struck me as being in criticism of the work of the Legislature.

Personally, I think the Legislature has done excellent work in a great many respects, with the limited time that they had in which to do it. Now as to the suggestion that the Bar Association devote time to the consideration of general legislation. If we attempted at the annual meetings to take up questions of general legislation we would have to stay in session more than fifty days to formulate bills to present to the next Legislature. We might, and it has been the custom of the Association where a member of the Association thought it of sufficient importance, or the Committee on Legislation saw proper, to formulate any act of general importance for consideration by members of the Bar, as suggested by Mr. Whitaker they would offer a bill for consideration to the Association and at that meeting or the next meeting it would have the approval or fail to receive the approval of the Association. That is the only way that we can evolve any legislation. With a membership as scattered as this is, it is impossible to do more than discuss measures at the annual meetings, to call attention to them. This is a seed bed, we plant the seed and they have to germinate, and by the time the next Legislature meets some bright member will have something to suggest. I do not think any criticism of the Legislature has been made today. There are some few facetious remarks always—it would not do to deprive us of the fun of saying things about each other that we do not mean. I do not think that anybody has attempted to criticize the last Legislature.

Mr. W. C. Davis:

I have not understood anything that has been said as criticism. I believe in criticism, I am not sensitive about it at all, and it was not on account of any sensitiveness on my part that I arose. I would not have arisen but for the fact that I was given credit for a bill when I was not entitled to the credit accorded. I do not understand that there has been criticism, and I think criticism is proper, and what I said about criticism applied to that chronic con-

dition of criticising everything that is done. I think what the Legislature has done has received exceedingly fair treatment at the hands of the people and Bar of Alabama.

Mr. Johnston:

If I may be permitted to close the discussion, which I do not think my paper started, I did not interpret some of the remarks as criticisms of the work of the Legislature in our peculiar field, I do not think it would be in matters of general legislation, but I am afraid it has been given that tendency, and I would ask the indulgence of the Association to an omission, an oversight of mine, which induced me to attempt an analysis of the judicial system as revised by the last Legislature, and to draw my own conclusions for the benefit of the Association, and I had prepared my paper along that line. When I ascertained my oversight that there was a Committee on Remedial Procedure, and in that I might not encroach upon their functions, I withdrew it and reported the paper myself yesterday. I want to say in justice to the Committee on Judiciary that it would be impossible for this Association with the utmost diligence upon its part which we could expect to bring to bear on matters of that sort, to hope to improve on the work that they did, and with the opportunity that they had. We must bear in mind that they did not have a new system to inaugurate; they were confronted with what was a hot spot. The fact that they accomplished so much the unification with a head and the ability to carry it on, I think what they did is a monument to their patriotism and ability, and I should be reluctant to think that any paper of mine had inaugurated anything that could be construed as a criticism. My only recommendation was not a criticism, they had gone as far as they could in unifying the system. My judgment is that they have not only improved it but it has stood the shock of change, and my only suggestion was that they go further in solidifying the system as a single co-ordinated articulate body for the judicial administration of Alabama.

I do not think, under the circumstances, that their work could have been improved by referring the matters to this body in any other way than they have themselves acted.

The President:

The next order of business is a Paper by Wm. H. Armbrecht, Esq., on "The Duty of the Older to the Younger Members of the Bar."

The Secretary:

I have a telegram from Mr. Armbrecht which states that he is detained in Mobile today. I suggest, Mr. President, that as Mr. Armbrecht may come while the Association is in session, that the reading of his paper be postponed for the present, and if he does not appear during the session, that the paper be received and printed in the proceedings. I make that as a motion.

Motion adopted.

THE DUTY OF THE OLDER MEMBERS OF THE BAR TO THE YOUNGER MEMBERS OF THE BAR

Mr. President and Gentlemen of the Alabama Bar Association:

I trust that the members of the Association will not jump at the conclusion that it is my purpose to read the older members of the Bar a lecture about a supposed failure on their part to do all they could have done to aid the younger members of the Bar, or to give them a schedule of their duties to the younger members of the Bar, or to map out for them a course of conduct with respect to their relations with such younger members. This is not my purpose. I hope only to give expression to some common place thoughts that have doubtless many times recently occurred to all of you. What I shall say, I know may seem to most, if not all of you, to be extremely trite, and hardly worth saying, but if, perchance, it causes any one member of the Bar present, to so recall an oft recurring

thought in such a manner that the thought is galvanized into action, the rest of you may feel as well repaid for the time you take in listening, as I shall feel for the time I take in speaking.

We all of us realize that we are living in one of those periods in the history of the world, which, for want of a better term, are called "Epochal." Every once in so often the development of the human race reaches such a stage that all the worst passions of men run riot, the ordinary machinery of governments breaks down under the strain, and men and nations and this machinery are cast into the fiery furnace of war, to be refined and molded anew. This is the age of destruction. All bonds of restraint are broken. Precedent and limitations upon the power of the responsible heads of government are set aside—the individual is submerged. In such an age we live.

When the war is over, and men—the survivors—emerge, hardened and chastened and refined by fire, they set about to restore civil government. Then the era of reconstruction and readjustment comes. In that age the younger members of the Bar will live.

In the present, those of us who, like myself, have reached or have almost reached the age when we can be of little service in war, have a part to play, which, though it is inconspicuous,—does not occupy the center of the stage, and must be played in the wings or even behind the scenes,—is just as important as the more conspicuous parts which have been played, and will be played, upon the battle fields of Europe. What is that part? It is to aid in preserving so much of our present machinery of government as has and will demonstrate its right to be preserved, and to use our utmost endeavors to see that our younger brothers of the Bar are fitted to play their parts in the era of reconstruction.

Let us not deceive ourselves by thinking that either our government or the government of any nation on the face of the globe will, when this war is over, be the same gov-

ernment that existed on the 4th of August, 1915. Each land will know a change, and whether that change shall be for the better or worse, will depend, not so much upon the issues of battle, as upon the courage, ability and consecration of the lawyers of those respective lands, who live and play their parts during the coming era of reconstruction.

You and I have seen in the past six months much change in the theories of government of the United States. We have seen Congress readily and properly confer upon the President of the United States, powers which no statesman would, two years ago, have dreamed of conferring upon him. This has been done before. It is always done in times of war and stress, when the nation is facing a great crisis. Each time, in the past, the power thus conferred has in some measure been recalled, but never in exactly in the same measure as it was given. Theories of government that, in '61 were considered only as the necessary concomitants of war, and, therefore, only temporary, have become permanent.

When our Union was formed, the dominant thought was the preservation and protection of the rights of the individual, and the powers conferred upon the general government were only such as were, at that time, deemed absolutely necessary. Most of those statesmen who dominated the convention which gave birth to the Articles of Confederation and the Constitution of the United States, placd the protection of the rights of the individual above the duty of each individual to the general public. This was natural. People were few, were widely scattered over a vast expanse of territory. They were accustomed to every man taking care of himself, and protecting his rights to the bitter end, if necessary. They had suffered from the arbitrary exercise of power by a prince in a far away land, who was unfamiliar with the conditions of life surrounding them, and had little concern in their welfare. They felt that they had suffered from too much gov-

ernment, and determined to give the Federal Government as little power as possible. We all know how this individualistic idea has slowly but surely given way to the idea that the welfare of the many is paramount to the welfare of the individual. We know how Marshall breathed the breath of life into the Constitution. We have seen the constant increase of government control over all the manifold phases of human activities. All this is the work of the lawyers of the country—lawyers in Congress, in the Legislatures, on the Bench and in the Courts. They have taken the rough working parts, forged in the furnace of war, and machined and finished and fitted them into the machinery of government as we know it today.

However difficult has been the task, and however beneficiary has been the result of labor of the lawyers of yesterday, a more difficult task and a more glorious opportunity awaits the lawyers of today and tomorrow.

Today the United States with the most Democratic government on earth, where the rights of the individual have been accorded the first consideration, when the common good has sometimes been sacrificed to protect the liberty of the individual, is engaged in a struggle for its very existence. Its enemy is probably the most autocratic government on earth, where the right of the individual has been to the highest degree subordinated to what is, by that government, conceived to be the common good. It is probable that neither the excessively paternalistic governmental system of Germany, nor the excessively individualistic governmental system of the United States will be suited to the conditions which will exist after the war.

Upon the lawyers of tomorrow will devolve the duties of shaping a system of government more suited to the needs of the people. He will be concerned less with the rights of individuals—he will think more of the duty of the individual to the state and to society. He will seek to establish an ideal government, suited to the needs of all the people at all times—in times of peace and in times of war.

He will fail, as all others who have faced that task before have failed. But the measure of his success—the nearness of his approach to his ideal, and the strength and permanence of the structure which he will rear, will depend upon the ability, the energy, which the lawyer of tomorrow brings to the task, and to the ideals which possess him.

What the lawyer of tomorrow will be, depends upon what the lawyer of today does for the lawyer of tomorrow—what his ideals will be depends upon what our ideals are.

If we look upon our calling only as a means of livelihood, if its one and sole object is to settle the disputes which arise every day between individuals with respect to the enforcement or protection of their rights, and the collection of fees incident to such settlement, then that conception of our calling will be the ideal of the younger member of the Bar, and when this time of construction comes, as it surely will come, he will be as little prepared for this task as we are for the present period of battle.

If, on the other hand, your ideals and mine are pitched upon a higher plane; if we feel that we are members of a profession and not artisans in trade, and that because of our peculiar training, and, I trust, peculiar abilities, there are peculiar responsibilities resting upon us, and we endeavor to promote the growth of these ideals in the younger members of the profession, we shall, when the time comes, have a force of men learned in the profession, ready, able and willing to solve the problems which will force themselves upon us at the close of the war.

I fear I am not stretching the truth when I say that in the soft and easy times of the past thirty years, most of the members of our profession have thought but little of their responsibility to the profession and their obligations to the younger members of the Bar. In the soft and easy times in the life of a family, fathers often think but little of preparing their sons for the harder times that may

come, and when the harder times do come, the sons succumb in the strife, and the family name disappears from the roll of honor. The younger members of the Bar are, professionally speaking, our sons, and for their future we have, comparatively speaking, the same responsibility that the father has for the future of his son. If the problems which present themselves to the younger members of the Bar are of no concern to us, if we have no time or thought for their guidance, we cannot complain if the Bar as a whole becomes more and more commercialized, and sinks lower and lower from that high position and that commanding influence in the counsels of the Nation that it merited and enjoyed in the days that are past.

One can get out of anything no more than one puts into it. For a short time we may rob the earth of her substance without replacing that which we take, but in a few years the soil will refuse to respond and the field will be barren—a shameful record of our husbandry. If all of the members of the Bar of this State or this country get out of the profession all that they can, and put nothing back into it, it will soon be a barren field.

We can and should see that the standards for admission to the Bar are constantly raised, we can aid and encourage the various law schools in innumerable ways, we can insist upon the maintenance of the highest standards of professional ethics, we can aid in punishing rather than protecting the man who is unworthy of his high profession, we can make the future of our profession a matter of interest to ourselves, so that opportunities to improve the profession as a whole will not pass us by unnoticed. If each man recognizes—nay feels—his responsibility, if he will determine to put back into his profession as much as he gets out of it, he will find right next to his hand the duty which he should perform. Each member of the profession, whether he recognizes it or not, exerts a powerful influence on at least one younger member of the profession.

In the professional activities of that young man, whoever he is, you should take that interest which you would feel in the life and development of your own son,—not because of himself alone, but because of the fact that through him you can work for the general good in the years that are to come. Besides benefitting him, and through him, the people of the future, you will yourself receive a benefit, because association with youth and a keen interest in the problems of youth and a willingness to help solve these problems will keep you always a younger member of the Bar.

In short, the responsibility of the older members of the Bar to the younger members of the Bar is the responsibility for their future, and the duty of the older members of the Bar to the younger members of the Bar is to aid in fitting them to measure up to the responsibilities that will be thrust upon them shortly. How each member of the Bar will work to that end is a question which each must decide for himself. There are a number of ways and, doubtless since I have been speaking a thought has occurred to you of something that you have left undone in this respect that you might have done. If you have neglected such an opportunity, neglect it no longer.

Or, perhaps, you say you have had no opportunity to do anything in this respect that was really worth while. Blindness to our opportunities for service is a common failing. We all have the opportunities, but we too often fail to see them.

If you have ever, by counsel and advice, or what is better than counsel and advice, by companionship and interest in the life and affairs of a young man, influenced that young man for the best, you have known a joy which surpasses any other joy. Today that joy will be increased many times by the fact that through that man you are influencing the future of the nation; you are influencing a man who will be called upon to play his part in the regeneration of a world—to aid in recreating systems of

governmental machinery for the nation and perhaps for the civilized world, to take the place of machinery that has broken down, in whole or in part, has been scrapped and is now being remoulded in the terrible furnace of war.

The President:

That completes the program for the afternoon, but it is with the Association whether you want to adjourn now for the automobile ride, or whether we will have read one of the papers on the program for tomorrow. The program for tomorrow will be rather crowded, and I have suggested to Col. John, if it was agreeable to him, that we might have his paper this afternoon instead of tomorrow. I take pleasure in presenting Col. Sam Will John.

Vice-President Stokely here took the Chair and presided during the remainder of the afternoon session.

Mr. John then read his paper.

THE NECESSITY OF A WORKMAN'S COMPENSATION LAW.

There is probably no sadder chapter in man's struggle for real liberty than that which truthfully records the usurpation of legislative power, by the Courts of England and the United States, in promulgating the so-called "law" casting on the workman alone all the burdens of injuries received in their work for others, who reaped all the profits of their labor.

To such an extreme had this cruel law, made by judges, been pressed, that England's great constructive statesman, Gladstone, saw the necessity of curbing it by legislative enactment, which was done by the Act of Parliament of Great Britain of Sept. 7, 1880.

This Act, very greatly abridged, in details not applicable to our conditions, but very similar, if not identical in principle was embodied in a Bill, by the writer hereof and

introduced into the House of the Alabama Legislature, in the Session of 1882-3, but its life was "sniffed" out by the Chairman of the Judiciary Committee.

The Bill was copied and introduced into the House in the Session of 1884-5, and after a very "hazardous run" was finally passed and approved February 12, 1885, and was the first law defining the liability of employers for injuries received by their employees in the service of the employer, ever enacted by a State in the Federal Union.

This Statute did not receive friendly consideration by the Courts and so far was this antipathy expressed to this reform measure, that our Supreme Court after several years had to overrule several decisions that were opposed to the spirit, and letter of this Statute.

The British Statute received similar treatment by the Courts and to correct this and make the law so that the burden of losses should not fall entirely on the workmen, but be distributed upon the consumers of the product, just as the loss of a broken tool, or machine had always been borne by the ultimate consumer,—the British Parliament in 1897 enacted the "Workmen's Compensation Act" which with some subsequent amendments, as to details of administration, is in force today and has become the base of thirty-seven State laws, and of those of Alaska, Porto Rico, Philippine Islands and the United States.

As is always the case when a real reform measure is enacted for the preservation of the health, life, limb and liberty of man, organized, predatory wealth attacked these laws in nearly every instance and in case of the first Statute of New York, Montana and Kentucky, succeeded in having those Statutes declared unconstitutional.

In the assault on the first New York Statute, the assailants boldly asserted that a State Legislature could not enact such a law, without express authority "conferred" in and by the State Constitution.

So strong an impression was made upon the people of New York by this false assertion that they amended the

Constitution of New York so as to declare: "Nothing contained in this Constitution shall be construed to 'limit the power' of the Legislature to enact laws for the protection of the 'lives,' health and safety of employees; or * * * for the payment directly or through a State insurance of compensation for injuries to employees, or for death of employees, etc."

It is amazing that a lawyer should not know, that the Legislature of a sovereign State has the power, unlimited, "omnipotent" as our great Democratic lawyer Rich Wilde Walker said in Dorman's case to pass any Statute, which is not forbidden by our State Constitution, or is not of the powers delegated to Congress.

Yet I have been asked by Alabama lawyers, since the introduction of my Bill providing for the Compensation of Workmen, injured in the service of the employer, if the Legislature could pass such a measure without a constitutional amendment "permitting" it?

These assaults on the constitutionality of statutes providing a real compensation law have not ceased when the Supreme Courts of several States have held them valid, but the laws of New York, Iowa, Washington and New Jersey have been assailed in the Supreme Court of the United States, with the result that, those of New York, Iowa and Washington have been upheld.

To those who want to read a strong, clear and just decision, I can confidently refer them to Justice Pitney's opinion delivered in U. S. Supreme Court, on March 6, 1917, in the case of N. Y. Central Rd. Co. vs. Sarah White, in which the Court declared the N. Y. Compensation Statute valid.

Following this decision the same Justice in the case of Hawkins vs. Bleakley, Auditor, etc., the Statute of Iowa providing compensation for workmen was upheld, and in Mountain Timber Co. vs. State of Washington, the Statute of that State was upheld.

These three cases answer several objections to the con-

stitutionality of such Statutes and are well worth reading. See No. 9, Vol. 37, Supreme Court Reporter, April 1, 1917.

While the case assailing the New Jersey Statute was argued and submitted at the same time as these three, I cannot find any report of it, though the newspapers published that, in that case, the New Jersey Statute was declared unconstitutional.

I might be content to say nothing more of the history of these statutes, but the first section of the Statute of Washington, one of the first enacted, has such a clear, true ring of genuine Democracy in it, that it is here quoted:

"The common-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern, industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman, has been uncertain, slow, and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and even more upon the welfare of its wage worker.

The State of Washington therefore, exercising herein its police and sovereign power, that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this Act: and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the Courts of the State over such causes are hereby abolished, except as in this Act provided."

I regret that I have not the statistics showing the working of this highest type of Democratic law, but will give enough of those from West Virginia to show the very

great benefit of the operation of a fair Compensation Law.

In the three first years of the operation of West Virginia's law, ending June 30, 1916, there was paid to 2096 beneficiaries the large sum of \$1,277,981.69, and this was done without delay, litigation, or expense to the public.

How much better this condition than the condition in Alabama for the same time.

All European countries except Turkey, the home of "the unspeakable Turk," have compensation laws, and all but 11 of the States of the Union have such laws.

It is gratifying to note that while the last Session of the Legislature would not consider a Bill embodying the best features of the U. S. Statute, and those of Michigan and New York, it did adopt a joint resolution raising a "Commission consisting of the Governor, Chief Justice of the Supreme Court, Presiding Judge of the Court of Appeals, the Attorney General and Director of the Department of Archives and History, whose duty it shall be to make an investigation of the subjects of "Workmen's Compensation," etc.

This Association at its last annual meeting appointed a Committee to consider this subject, from which a report is to be made at this meeting and I appeal to you to earnestly, heartily, exert all your influence to secure the enactment of a good law under which our fellows, who are engaged in hazardous labor, may receive the benefits they would receive if injured in West Virginia, New York or Washington.

I appeal to you to help take Alabama out of the "Turkey" class, and place her abreast of the foremost State of this American Union.

Why let the State that stands "First" on the roll of the States of this Union in providing a law defining the liability of employers to their employees longer remain in the class of backward, non Democratic States?

I beg you to let us "Move up!"

REGISTRATION OF LAND TITLES.

In the preceding paper I discussed briefly the necessity of a law providing for "Workmen's Compensation," as such a law will be very conducive in preserving the life and limbs and health of thousands of our people, and in preserving them from becoming charges on the charity of the community; and therefore it is of the first importance and should have first, prior consideration by this Association, the State Commission for Law Reform and the Legislature.

Next in order should be a law regulating the Registration of titles to land, so that a holder of a Certificate of Registration duly issued would thereby have indisputable evidence of an absolute title in fee.

It needs no argument to show that land is the most valuable property man can possess for on it he was born, on and out of it he must live, on it die and in it be buried.

There may be connected with, or embodied in such a law, provision for raising a Fund, which is called an "Assurance," "Indemnity" or "Insurance" Fund, but by whatever name it is called, the sole beneficial purpose of such a "Fund" is to afford indemnity for lands lost by reason of the fraud, negligence, or mistakes of persons charged with the duty of administering the law, and it is in no sense an insurance of the title for the very heart-foundation of this system is the Governmental Register of Titles, which the Certificate of Registration is conclusive evidence of an indefeasible title, in fee simple.

This feature is necessary to a fair, equitable law and I would not advocate the passage of a law, with it left out, though several States have such one sided laws.

In 1858 Sir Robert Torrens succeeding in having enacted by the Parliament of South Australia a Statute governing the registration of land titles and this Statute became the base of very many Statutes, in the Colonies of Great Britain, in the Philippines, Hawaii and a number of States in the American Union.

Like all reforms these Statutes were vigorously assailed and denounced in no measured terms and in several instances were declared unconstitutional.

The one of the first Statutes so stricken down was that of Ohio and it is hard to think that a Supreme Court of one of the largest States of this Union could be found who knew so little of the fundamental principles upon which our Government is founded, knew so little of the powers and rights of a Sovereign State, as to declare: "The functions of the State are governmental only. Its powers are embraced within the three familiar divisions of legislative, judicial and executive. He who affirms the existence power in question must be able to find it embraced in one of these divisions. And since the insuring of titles does not essentially differ from any other insurance, nor indeed from any other business, or occupation, he must find authority in whose exercise the State may become the competitor of the citizen in every vocation."

In these few lines he convicts himself of ignorance of the true rule by which to test the constitutionality of a Statute of a sovereign State, so strongly and eloquently laid down by our Supreme Court in *Dorman v. State of Alabama*. 34. Ala. Reports. He convicts himself of not knowing that the State does not engage in the business of insurance by providing a Fund to assure persons against the fraud, ignorance, negligence and mistakes of public servants, when the State does not contribute one cent to the Fund. He demonstrates that he did not know the difference between an insured title and a Registered title, within the meaning of that term, as used in all Statutes based on the Torrens Act.

Like a blind adder he struck at what he believed was a reform, which would greatly benefit many and injure no one. His death blow to the Ohio Statute did not deter the Legislature of Massachusetts, Illinois, Oregon, Washington, California, Colorado, Minnesota and New York and other States to the total number of 37, from enacting

Statutes for Registering land titles. And there can be no doubt that the provisions of these Statutes are well within the established principles governing Bills to quiet titles.

The power of the State to provide for the adjudication of titles to real estate, not only as against residents, but as against non-residents who might be brought into Court by publication was distinctly upheld in a very strong opinion by Ch. J. White, in the case of *American Land Co. v. Zeiss*, 219 U. S. p. 47, and is strongly stated in the authorities he cites.

Even a casual consideration of these authorities will convince any lawyer that a Statute embodying the principles of the Torrens Act, adapted to our judicial system under the Constitution, is clearly within the power of the Legislature to enact.

While there has not been as many adjudicated cases on the subject of establishing and administering an "Assurance Fund," yet there are well considered cases involving the same principal, which have been decided.

The Statute that is nearer like the "Assurance Fund" law, is that of Oklahoma which levied upon every bank existing under the laws of that State, an assessment of a percentage of the bank's average deposits, for the purpose of creating a guaranty fund to make good the losses of depositors in insolvent banks, and this was upheld by the Supreme Court of U. S. in *Noble State Bank v. Haskell*, 219, U. S. 104.

This same principle is in every "Workman's Compensation" Act and this was upheld in *Mountain Timber Co. v. Washington*, No. 9, Vol. 37, Supreme Court Reporter, April 1, 1917.

There can be no reasonable objection to the enactment of a law providing for the Registration of the titles to land and establishing an Assurance Fund to be administered by public officials under the judgments and decrees of a Court.

Such a law would be a great benefit to every land owner, who took advantage of it.

It should not be compulsory, but the present system of recording conveyances should remain open to all who chose to record their conveyances and in all but a half dozen of the larger counties the Probate Judge could be the "Recorder" or "Registrar" of all titles which the Circuit Court should adjudge to be eligible to be "Registered."

The procedure to obtain such a decree should be in the nature of a Bill to quiet titles and since our Circuit Courts are now open from the first Monday in January to and including the last Saturday of June and from the first Monday after the "4th of July" to and including the last Saturday before Christmas Day, there need be no delay in obtaining a decree of registration.

The fees for registering titles and noting subsequent transfers, or liens, have usually been fixed at 1/10 of one per cent of the actual value of the property conveyed, and this small charge has produced a fund ample to cover all losses caused by any improper registration, and the surplus has enured to the benefit of the public treasury.

After the first cost, which should be limited by law, the cost of subsequent transfers need not be more, or very little more than our fees for recording.

A few years ago, no bank would lend on mortgage on land, but thanks to a Democratic administration of the Federal Government, banks for the express purpose of lending to farmers on mortgage have been established and a land owner can now borrow money on land at low rates of interest and on long time.

In States having a system of Governmental Registration of land titles land owners who avail themselves of it will have a distinct advantage over those, who apply for "Farm Loans" and whose lands are not "Registered."

This fact alone should insure the passage of such a law for Alabama.

We sometimes boast that this is an advancing civiliza-

tion and we now see the whole world advancing to "Universal Democracy" led by Woodrow Wilson, a true Democrat, after the type of Thos. Jefferson, and in this great advance are you willing to lag behind in company with Turkey?

Why not go to the front, abreast with the foremost.

I appeal to you in the language of Forrest's favorite command—Move up men, move up!

The President:

The discussion of Col. John's paper will go over until the session tomorrow morning, as also action on the Report of the Sub-Committee.

On motion, the Association then recessed until 8 o'clock P. M., to meet in the Ball Room of the Tutwiler Hotel, to hear the Annual Address of Hon. H. G. Connor.

NIGHT SESSION.

Ball Room, Tutwiler Hotel,
Birmingham, Ala., July 12, 1917.

The Association was called to order by the President at 8 P. M.

The President:

Gentlemen of the Association: I have the honor of presenting to you Judge H. G. Connor, United States District Judge for the Eastern District of North Carolina, who will deliver the Annual Address.

Judge Connor then delivered the Annual Address.

JOHN ARCHIBALD CAMPBELL,
1811-1889.

The North Carolina Colonial Records disclose that, so early as 1729, several families of Scotch Highlanders had settled on the Cape Fear River, (in that province). There,

they found a genial climate, a fertile soil and a mild and liberal government. Everything contributed to their happiness and contentment; their letters to friends and relatives in Scotland glowed with praise of the new home.

Netill McNeill, one of the earliest Scotch settlers, on the Cape Fear, upon his return from a visit to Scotland, in 1739, brought over with him three hundred and fifty Highlanders. The General Assembly exempted them from public and private taxes for ten years and appropriated one thousand pounds for their use, to be paid Duncan Campbell, to whom, on February 28, 1740, a Commission was issued, as one of the Justices of the Peace for Bladen County. Following this liberal offer came the disaster of Culloden, the rise in rents, and the harsh enactments of the British Parliament, and immediately a flow of population from the Highlands to the New World set in strong and steady. With a keen appreciation of its commercial advantages, they selected a point of land at the head of Navigation, on the Cape Fear, where they laid out a town, first called Campbellton, then Cross Creek, afterwards Fayetteville. The "Scotts Magazine" and the "Courant," of that period, contain accounts of the sailing of vessels, carrying large numbers of Highlanders to North Carolina from Islay, Syke and Sunderland. Though unfortunate economic conditions lay behind this Highland immigration, it is not, therefore, to be supposed that those who left their native land, to seek homes in America, belonged to an improvident and thriftless class, or that they arrived in Carolina empty-handed. Such people are not of the kind who voluntarily take upon their shoulders the task of conquering the wilderness and laying the foundations of great States and Governments. The Highland emigrants were among the most substantial and energetic people of Scotland; they left the land of their nativty because it did not offer them an outlet for their activities. "The Scotts Magazine" refers to them as "the most wealthy and substantial people in Syke"—and the "Courant" as "the finest set of fellows

in the Highlands." By the year 1754, the Highland settlement, around Campbellton, had grown so important that the General Assembly erected it into a County which, with curious irony, was called in honor of the "Butcher Cumberland," and gave it the privilege of sending two representatives to the Assembly. Among those who came over with or about the time of Flora McDonald, coming, was John Campbell, whose son, John Archibald Campbell, served as an officer in the American Army, on the personal staff of General Nathaniel Green. He was a member of the General Assembly, and Senate, at several sessions, and a delegate in the Hollsboro Convention of 1788, voting, with a majority, against the ratification of the Federal Constitution. He was also a member of the Fayetteville Convention, November 1789, at which time the Convention was ratified.

His son, Duncan Green Campbell, was born in North Carolina, February 17, 1787. He graduated from the State University in the Class of 1807. And soon after (his graduation he) moved to Georgia, where he became principal of a Female College. He studied law with Judge Griffin, of Wilkes County, and (soon) after his admission to the Bar, was elected Solicitor General of the Western Circuit. Upon his retirement from office, he was elected for several terms a member of the Legislature from Wilkes County. Mr. Miller, in his "Bench and Bar of Georgia" says that Mr. Campbell "had the honor of being the first man in Georgia to introduce a bill for the education of women." He was in advance of his associates and, although he defended the measure with zeal and ability, it was defeated. . . . He was industrious in his habits, liberal in his views, and ever watchful of the public interests, especially for the diffusion of knowledge among the masses, as an element of public happiness and prosper in his social relations, long a Trustee of the University of Georgia, the warm friend of popular education. Had he lived there is no doubt he would have been called to the State Executive." Together with Major James Merriweather, he was appointed, July 16,

1824, by President Monroe, Commissioner to form a treaty with the Creek Indians, for the purpose of securing the cession of their lands. The negotiations extended through several years, with many complications and controversies. At their conclusion, the Legislature adopted resolutions expressing the confidence in, and gratitude of, the people of Georgia to Colonel Campbell. He married Miss Williamson, the daughter of Colonel Macajah Williamson, who rendered a conspicuous service in the Southern department, during the Revolution. He died in 1828, at the early age of forty-two years.

His son, John Archibald Campbell, was born in the town of Washington, Wilkes County, Georgia, June 24, 1811. He entered Franklin College, afterwards the University of Georgia, at eleven years of age, graduating in the Class of 1825,, winning the first honors of his Class. An interesting incident, forecasting his future, is given by Governor Gilmer in his book, "The Georgians." He says: "While the son was a student at the College, his father visited Athens and was invited to attend a meeting of the Demosthenian Society, of which both father and son were members. Colonel Campbell held forth, by request, upon the topic of debate. When he was done speaking, John asked leave to answer the gentlemen, and so knocked all his fathers' contentions into NON SECQUITURS that it was difficult to tell which had the uppermost, in the father's feelings—mortified vanity or gratified pride." Upon his graduation, Campbell was appointed, by John C. Calhoun, then Secretary of War, to a cadetship at West Point Military Academy. After pursuing his studies there for three years, he resigned, (1828,) on account of the death of his father. He spent a year in Florida teaching school to enable him to meet and discharge the responsibilities which his father's death imposed upon him. Upon his return to Georgia, he studied law with Governor John Clark, and his uncle, John W. Campbell. At the Session 182, the Legislature, by Special Act, provided for his admission to the Bar, to-

gether with several other students, including Robert Toombs. He moved to Montgomery and, on March 9, 1830, was admitted (as a member of) to the Bar of Alabama. He resided there until 1837 when, seeking a larger field, for labor in his profession, he moved to Mobile. In response to an invitation to address the State Bar Association, at its Session of 1884, he wrote: "I continued to practice, without relaxation or diversion in her Courts—relation and habits, whether professional, domestic, personal or political, were formed in her society. Character, capacity, motives for exertion, or for action, were developed and ennobled there; and as one product and result there is an abiding love for the State, for the law as a science, and a profession, and in the interest in her judicial institutions and in the members of her State Bar."

Judge Campbell pays a high and just tribute to the Judges and lawyers of the State during those years. He says: "The Courts were administered by men of learning and apt judgment; and their deeds and words were marked with the impress of moral and intellectual worth, and of personal honor. There was, among the Bar, great resources of energy, research, readiness and manliness of effort which were habitually applied."

While living in Montgomery, Mr. Campbell married Miss Anna Esther Goldthwaite. She was a native of New Hampshire, and the sister of Judge Henry Goldthwaite of Mobile and Judge George Goldthwaite, later United States Senator. It is an interesting coincidence that your Secretary resides on the lot upon which the young attorney of 1830 took his bride and set up housekeeping—holding the title by virtue of a deed from Judge Campbell and his children, bearing date June 30, 1879. The title has passed but once in eighty-three years. As were all successful lawyers in the South, Mr. Campbell was sent to the Legislature a few years after admission to the Bar. This was in those days, regarded as an essential step in the preparation of a lawyer for the larger sphere of activity in his

profession. While serving his County as a legislator, in 1836, by reason of the disturbances created by the Creek Indians in the State, two army corps were organized and Mr. Campbell was appointed Adjutant General of the second.

From the "Heads of the Alabama Legislature," first published by Stephen F. Miller in "The Monitor," March 1843, we learn that, at that time "Mr. Campbell of Mobile is generally considered a man of the cleverest and most vigorous intellect in the House of Representatives."

. . . Among the leaders, he stood foremost. On some occasions his masterly powers were exhibited with a cogency of argument which if it did not command assent, was at least unanswered. His strong efforts (and he does not make any other,) were listened to with a depth of attention which was accorded to very few Speakers in the House. To the character of a statesman and a financier, Mr. Campbell unites the highest honors of the law. In the Supreme Court, if he is not without a rival he, at least, is without a superior."

Garrett—"Reminiscences of Public Men in Alabama" writes: "Whenever he figures in debate, an atmosphere of intellect and logic seemed to invest him as a halo of distinction. His facts were stated in such a natural order and connection that, like the summing up of a record by Chief Justice Marshall, the truth was at once eliminated for the judgment." He represented Mobile in the Legislature of 1842. He was tendered, in 1836, by Governor Clement C. Clay, a position on the Supreme Court Bench, which he declined. We are enabled, by reference to Mr. Miller's sketch, to have a description of his personal appearance and manner, at this period of his life. He says: "He is cold, taciturn, not the least suggestion that he courts society, absorbed in thought, with heavy brow, yet unassuming expression of countenance. At times he is pleasant, and always respectful when it becomes necessary for him to converse. . . . He seems to hold all elegance

and imagination in utter contempt, as unworthy a practical man. As a member of the Democratic party he stands alone in Alabama for greatness of conception in all that relates to our political system."

It is, however, with Judge Campbell, as a lawyer during these years of preparation for the large and important sphere of labor and service into which he was to be called, that we are most concerned. The work of the lawyer in active practice, either in counsel or advocacy, drafting instruments, transferring titles, family settlements, giving expression to, and safeguarding the rights of parties to contracts, or trying causes in the Courts, involving property rights, enforcing obligations, vindicating or protecting character—prosecuting or defending those charged with violation of the criminal law, while calling into action the highest mental equipment, demanding constant and unremitting labor, secures but transitory fame. The advocate who, by his arguments, addressed to the reason, or his appeal to the sympathies or emotions, wrests verdicts from juries, and judgments from Courts, elicits enthusiastic applause from crowded courthouses, holds by a temporary tenure the memory of his hearers. While on the circuit and around the fireside at country towns, where lawyers assemble, the victories won, or causes lost, furnish subject for conversation, with each generation new leaders, and new standards of professional success, soon displace them. Those who, like myself, have outlived their early associates, realize the truth, and sympathize with the emotions, to which Judge Campbell gave expression in his later days. He says: "The one event that happeneth to all, hath happened to them alike, but we should regret to feel 'the memory of them is forgotten.' A new generation occupy their places and are charged with their responsibilities." Judge Campbell wisely used, and profitted by, the opportunity which came to him during these years of preparation, building upon strong and permanent foundations the structure of judicial and professional fame which, later

in life, came to him. In the Supreme Court Reports, of this State, and the dockets of the Circuit Courts, in which he practiced, are to be found the record of his labors. The evidence of the loyalty with which he paid court to the jealous mistress of which, as he says, "without relaxation or diversion," he was the suitor, is found in his masterly opinions in the Reports of the Supreme Court of the United States and his arguments, subsequent to his retirement, before that tribunal. He argued, at the December term, 1850, of the Supreme Court of the United States, *Collins vs. Hallert*, (10 How. 174), *Reverdy Johnson* appearing against him. At the December Term, 1851, he had six appearances, the most important in point of the interests involved, and the questions presented, being *Gaines vs. Relf, Exr.*, and others, in which he met in debate, with other leaders of the Bar, *Daniel Webster*. He appeared in this case in the Circuit Court of the United States at New Orleans, where his arguments made a strong impression. That his reputation and position at the Bar of this States was of a high order, is shown by the tender, 1852, by Governor Collier, of the appointment to the Supreme Court which, for the second time, he declined.

Justice McKinley died July 19, 1852, and at the request of the members of the Court, John A. Campbell was appointed and unanimously confirmed as Justice of the Supreme Court, as his successor. In his address at the time of the death of Judge Curtis, Judge Campbell says: "The death of Justice McKinley made a vacancy and that vacancy was supplied by one recommended by the Justices, Judges Catron and Curtis bearing their letter of recommendation to the President."

Mr. Duncan says: "At the age of forty-two, he was appointed a Justice of the Supreme Court of the United States, the appointment coming to him at the solicitation of members of the Court, as a result of the impression he had made on them by his arguments before that body, and not as a reward for political influence." Mr. Carson says:

"This great Judge was commissioned, March 22, 1853. . . . He was a profound and philosophic jurist, who gave vigor and breadth to his intellect by constantly resorting to the great sources of the Roman law." "From 1837 to 1853 the story of his life was the routine of an industrious, painstaking, earnest lawyer, exploring every domain of knowledge to make it tributary to his profession, overpowering his competitors at the Bar, by his great researches into the history of the law and his familiarity with principles and cases. To his great learning and ability, he added the weight of an irreproachable character and virtuous life." When we recall the fact that Judge Campbell had held no political office—save representing his County in the State Legislature, ten years prior to his appointment; that he had twice declined appointment to the Supreme Court of the State, it becomes manifest that his unsolicited promotion came as the recognition by the Supreme Court and the President, of his learning, ability and character as a man and lawyer—the only basis upon which judicial appointment should ever be made. From this time, his life and labor become of national import. It is interesting to have, in his own words, a description, years after the event, and when all but himself had passed away, of the Court, its members and method of procedure.

Referring to Judge Curtis, to whose memory he was paying tribute, 1874, he said: "The appointment came to him. He was not required to pursue or to beseech it. It came to him by a divine right—as the fittest. The Court was presided over by Chief Justice Taney, who had established, to the acknowledgement of all, that his commission was held by the same title. He was then seventy-three years of age, bowed by years and infirmity of constitution. In the administration of the order and procedure of the Court there was dignity, firmness, stability, exactitude and, with these benignity, gentleness, grace and right coming. The casual visitor acknowledged that it was the most majestic tribunal of the Union, and that the Chief Justice was the fit-

test to pronounce, in it the oracles of justice. All of the Justices had passed the meridian of ordinary life before their junior associate had come to the Bar. There was much statliness in their appearance and, with diversities of character, education, discipline, attainments and experience, all of them had passed through a career of honorable service, were men of large grasp of mind and of honorable purpose. . . . The deliberations were usually frank and candid. It was a rare incident . . . when the slightest disturbance, from irritation, excitement, passion or impatience occurred. There was habitual courtesy, good breeding, self-control, mutual deference—in Judge Curtis, invariably so. There was nothing of cabal, combination or excitement, or exorbitant desire to carry questions, or cases. Their aims were honorable, and all the arts employed to attain them, were manyly arts.” Could there have come to a lawyer, who had devoted the early years of his life to the science of the law and pursued, “without relaxation or diversion,” the gladsome light of jurisprudence, a richer reward, bringing higher gratification of an honorable ambition, than the call to join this goodly company, to become a co-worker with them, in administering justice in the highest judicial tribunal of the world. When a young man, Chief Justice Pearson was, by hard work and unrelenting study, laying the foundation upon which he built his fame, as one of the great Common Law Judges of the Country, he said that his ambition was to go upon the Supreme Court Bench and “rub up against Ruffin” who, without dissent, is conceded to have been North Carolina’s greatest Chief Justice. We may well conceive that, a similar vision came to Judge Campbell, when for twenty years, he was imbuing his mind with the principles of the Common Law, and mastering the writings of the jurists of the civil law, studying the opinions of the great Judges. When Judge Gaston was offered the United States Senatorship, he put it away from him saying: “To administer justice in the last resort, to expound and apply the

laws for the advancement of right and the suppression of wrong, is an ennobling and, indeed, a holy office, and the exercise of its functions, while it raises my mind above the mists of earth, above cares and passions, into a pure and serene atmosphere, always seems to impart fresh vigor to my understanding and a better temper to my whole soul." To a lawyer imbued with this noble ambition, inspired by these generous sentiments, wealth, political position and power count nothing, when measured with the opportunities for service which the judicial office brings. Judge Campbell at once took his place, and performed his share of the work of the court, of which he had by invitation become a member. The work of a Judge can only be understood and estimated by a study,, not only of the opinions which he writes, but the openings of those with whom he is associated. It is difficult for one who has not taken part in the deliberation and discussion, in the Conference room, of a Court of Appeals, to estimate the value of the personal and judicial, mental and moral, qualities of each member of the Court—his influence in bringing the Court to a conclusion and the form which the opinion takes, giving expression to the thought and process of reasoning by which the conclusion is reached and maintained.

It is not possible, except to a limited extent, to refer to the opinions written by Judge Campbell. Reference to several of the most notable, enables us to estimate the quality of his work—his method of labor, style of expression, extent of research and cogency of reasoning. At the first term, at which he sat on the Court, the case of McDonogh vs. Murdock, Exrs., was argued by Brent, May and Hunt for appellants—Johnson and Benjamin for appellees. It involved the construction, and validity, of the holographic will of John McDonogh, who died, domiciled in Louisiana, without children, devising and bequeathing a very large estate, in trust for the establishment and support of a number of charities. He directed that his estate be held by trustees, in succession to carry out his plans and pur-

poses; that, after the execution of several specific trusts, the balance of his estate be invested, and the income be applied to the education of the poor children, without regard to caste or color, in the cities of New Orleans and Baltimore—"the whole of the general estate" to form a fund, in real estate which shall never be sold or alienated, but be held and forever remain sacred."

A number of difficult and interesting questions were presented and argued. The reporter states that the opinions of a number of eminent french jurists were taken. Judge Campbell states, clearly, the objects and purposes of the testator, as set out in his will, saying: "The exaggeration which is apparent in the scheme he projects, and the ideas he expresses concerning it, afford the ground of the argument for the appellees. It is, however, unfair, to look to the parts of the will which relate to the disorders which prevail in society, or to his aspirations to furnish relief for these "during all time, or to the prophetic visions awakened by the exalted and exciting ideas which dictated the conditions of the will, for the rule of its interpretation. We must look to the conveyances he has made in the instrument, the objects they are fitted to accomplish and the agencies, if any, to be employed, and endeavor to frame these into a consistent and harmonious plan, accordant with his leading and controlling intentions."

He proceeds to trace the sources, and history, of Roman jurisprudence, upon which that of Louisiana is founded, quoting from the Codes—the writings of the great civilian jurists—for the purpose of interpreting the language of the Louisiana Code prohibiting "substitutions and fidel commissa, saying: "The terms are of Roman origin and were applied to modes of donation by will, common during its empire, and from thence were transferred to the derivative system of law in use upon the Continent of Europe."

After an interesting history of the method resorted to for building up and continuing in families and corporations,

large estates and their accumulations, he says: "This mode of limiting estates from degree to degree and generation to generation was much employed on the Continent of Europe, and served to accumulate wealth in a few families, at the expense of the interests of the community. The vices of the system were freely exposed by the political writers of the last century, and a general antipathy excited against it. Substitutions having this object were prohibited during the Revolution in France, and that prohibition was continued in the Code Napoleon, whose authors have exposed, with masterly ability, the evils which accompanied them. The prohibition was transferred to the Code of Louisiana." He reaches the conclusion that prohibition does not extend to municipal corporations, or to trusts "for lawful and honorable purposes, or for public works or for other objects of piety or benevolence." The opinion vindicated the wisdom of the Justices of the Supreme Court, in asking his appointment, and the President in making it. It contains a wealth of learning upon one of the most interesting and important questions in our Chancery jurisprudence, derived from the Civilians, and the Statute of 43rd Elizabeth, as applied to American conditions. It is a monument in the course of judicial decisions in this Country, upholding and administering charities, created and contributed to, by men and women of wealth, large vision and humane sympathies. At this term the case involving the title to valuable property and the interests of the members of the Methodist Episcopal Church was decided. The litigation grew out of the division of the Church between the Northern and Southern members, resulting from divergent views in regard to slavery. It was argued by Mr. Stanberry of Ohio, Mr. Badger of North Carolina and Mr. Ewing of Ohio. The cause of the separation was well understood, but was not referred to in the opinion of Mr. Justice Curtis, who wrote for a unanimous Court, sustaining the contention of the Southern branch of the Church.

The validity of Morse's patent, for his invention of the

Electro Magnetic Telegraph was sustained by this Court. In a suit for the alleged infringement of the patent issued to Ross Winans for the invention of the drop bottom coal car, the general form of which is now in common use, the claim of Winans was sustained, in an opinion by Judge Curtis. The Chief Justice, Judges Catron and Daniel concurred in a dissenting opinion, written by Judge Campbell, in which he said: "To escape the incessant and intense competition which exists in every department of industry, it is not strange that persons should seek the cover of the Patent Act for any happy effort of contrivance or construction; nor that patents should be very frequently employed to obstruct invention, and to deter from legitimate operations of skill and industry. This danger was foreseen and provided for in the Patent Act Nothing in the administration of this law will be more mischievous, more productive of oppressive and costly litigation, of exorbitant and unjust pretensions and vexatious demands, more injurious to labor, than a relaxation of these wise and salutary requirements of the Act of Congress." In this opinion we find the first indication of his hostility to monopolies and the beginning of his long, and ably maintained, opposition to them, in all of their variant forms and manifold phase.

Judge Campbell wrote a dissenting opinion at this term, vigorously combating the tendency of the Court to enlarge its jurisdiction in cases in which Corporations were parties, sustained upon the theory that they were citizens, within the meaning of the Constitution and Judiciary Act. The debate was of long standing, and the evolution of the doctrine, by which the jurisdiction has been sustained, and enlarged, is among the most interesting subjects in our judicial history. It began with the decision of *Devaux's case*, 5 Cranch 61 (1809), in which Marshall, C. J., said: "That invisible intangible and artificial being, that mere legal entity, a corporation, aggregate, is certainly not a citizen and, consequently, can not sue or be sued in the

Courts of the United States, unless the rights of the members, in this respect, can be exercised in their proper name. If the corporation be considered as a mere faculty, and not as a company of individuals who, in transaction of thier joint concerns, may use a legal name, they must be excluded from the Courts of the Union." In that case the jurisdiction of the Court was sustained upon the averment that the stockholders and Directors of the Bank of the United tSates and the defendants, were citizens of different States. In *Louisville Railroad Co. vs. Letson*, (2 How. 497) (1844), the Court, Taney being then Chief Justice, while disclaiming that it was overruling the *Devaux* case, announced the doctrine that, upon the averment of the domicile of origin of the corporation, the presumption arose that the stockholders were citizéns of the same State.

The question was again projected into discussion in *Marshall vs. Baltimore & Ohio R. R. Co.*, (16 How. 352.) The jurisdiction was invoked upon the averment that "the Baltimore & Ohio R. R. Co. is a body corporate, b yan Act of the General Assembly of Maryland," plaintiff being a citizen of Virginia. The corporation challenged the jurisdiction for that it was not alleged that either of its stockholders were citizens of Maryland.

Mr. Justice Grier, writing for the majority, held that the form of the averment was sufficient, because of the presumption arising, from the habitat of a corporation, in the place of its creation, being conclusive as to the residence or citizenship of those who use the corporate name and exercise the faculties conferred by it, is a sufficient averment that the real defendants are citizens of that State." Judge Campbell in strong, but temperate, language and judicial tone, dissented from the conclusions reached by the majority. After reviewing the earlier cases and discussing Letson's case, citing the language of Judge Marshall in the *Devaux* case, as the only authoritative declaration of the Court, he says: "The word 'citizen' in the American Constitution, State and Federal, had a clear, distinct and

recognized meaning understood by the common sense and interpreted accordingly by this Court, through a series of adjudications. The Court has contradicted that interpretation and applied to it, rules of construction which will undermine every limitation in the Constitution, if universally adopted. A single instance of the kind awakens apprehension, for it is regarded as a link, in a chain of repetitions. The litigation before this Court, during this term, suffices to disclose the complication, difficulty and danger of the controversies that must arise, before these anomalous institutions shall have attained their legitimate place in the body politic. Their revenues and establishments mock at the frugal and stinted conditions of State administration; their pretensions and demands are sovereign, admitting, impatiently, interference by State legislative authority."

* * * * "I am not willing to strengthen or to enlarge the connection between the Courts of the United States and these litigants. I can consent to overturn none of the precedents or principles of this Court, to bring them within their control and influence. I consider that the maintenance of the Constitution, unimpaired and unaltered, a greater good than could possibly be affected by the extension of the jurisdiction of this Court, to embrace any class either of persons or of cases." While the jurisdiction of the Federal Court, in litigation in which corporations are parties, has long since passed beyond the domain of debate, and is now among the "things fixed," it must be conceded that, in establishing the jurisdiction, the subtle science of pleading, and the resort to a fiction, which Sir Henry Maine tells us "is meant, an assumption which conceals the fact that a rule of law has undergone alteration, the letter remaining unchanged," or as Bentham says: "An instrument of arbitrary power, invented by functionaries, invested with limited powers for the purpose of breaking through the limits in which the power was intended to be circumscribed," has been liberally invoked and freely used. As a matter of fact the conclusive presumption arising upon

an allegation of the domicile of origin of a corporation—that the stockholders are citizens of the same State is, in a very large majority of cases, untrue. It can not yet be truly said, notwithstanding legislative and judicial declaration, that fictions “have had their day and ceased to be”—Courts will never cease to resort to them as means for enlarging their jurisdiction. They are prolific germs in the propagation and amplification of judicial power—probably this is true, of necessity.

In *Piqua Branch of the State Bank of Ohio vs. Knoop*, (16 How. 376), was presented the much debated question respecting the rule which should control, in construing an act of the Legislature, changing the method of, or imposing upon corporations, taxation other than is prescribed in the Charter—the extent to which such provisions, in the Charter, are contractual. The majority of the Justices, speaking by Mr. Justice McLean, sustained the contention of the Bank. Judge Campbell, together with Judges Catron and Daniel, dissented,—the last named adopting the opinion of Judge Campbell. After tracing the history of the struggle in England to preserve intact the revenues with which the King was vested, in trust for the people, he says: “The rule that public grants convey nothing by implication, are construed strictly in favor of the sovereign, do not pass anything not described, that general words shall never be so construed as to deprive him of a greater amount of revenue than he intended to grant, were not the inventions of the craft of crown lawyers, but were established in contests with crown favorites, and impressed upon the administration, Executive and Judicial, as checks, for the people.”

Referring to “the sly and stealthy arts to which State Legislature are exposed, and the greedy appetites of adventurers for monopolies, and immunities from the State right of government,” he says: “We do not close our eyes to their insidious efforts to ignore the fundamental laws and institutions of the State, and to subject the highest

popular interests to their central boards of control, and directors, management The subject affects the public order and general administration. It is not properly a matter for bargain or barter, but their enactment is in the exercise of a sovereign power, comprehending within its scope, every individual interest in the State." The struggle so long carried on in the Courts, in respect to Legislative immunity from taxation of corporate property, based upon the principle announced in the Dartmouth College case has, by the introduction into modern State Constitutions, of the reserved power to amend or repeal all charters, to a large extent, come to an end.

In *Railroad vs. Winans*, (17 How 30) he wrote, for the unanimous Court, an opinion holding that a Railroad Company could not, by farming out its franchises, or leasing its track, escape liability for the acts of its lessee. To the objection of the Company that the cars employed were not built by, and did not belong to it—that they were the exclusive property of the lessee; that the agreement to divide profits did not constitute a partnership nor evince a relation of principal and agent, he says: "This conclusion implies that the duties were imposed upon the plaintiff by the Charter are fulfilled by the construction of the road and that by alienating its right to use and its powers of control and supervision, it may avoid further responsibility. But those acts involve an overturn of the relations which the Charter has arranged between the corporation and the community. Important franchises were conferred upon the corporation to enable it to provide the facilities to communication and intercourse required for the public convenience. The corporation can not absolve itself from the performance of its obligations, without the consent of the Legislature." This doctrine has become the settled law of the Country.

In *Florida vs. Georgia*, (17 How. 478), Judge Campbell discussed, in a strong dissenting opinion, in which he was joined by Judges Curtis, McLean and Daniel, the extent of

the power, conferred by the Constitution, to bring a State to the Bar of the Court, and call upon it to answer a suit, either of foreign or of the United States. A bill was filed by the State of Florida against the State of Georgia, for the purpose of having a decree establishing the line between the two States. Mr. Badger and Mr. Berrien, representing Georgia, and Mr. Westcott and Mr. Johnson, Florida. The Attorney General, Mr. Cushing, asked permission to intervene and assert the claim of the United States to a portion of the land in controversy. Both Judge Curtis and Judge Campbell, relying upon the well settled rules of Chancery practice, showed that a person seeking to intervene, should be made a party to the proceeding and become bound by the decree—whereas the Attorney General disclaimed any purpose or power, to make the United States a party with the incidents attaching to that relation. Both States objected to the intervention. Judge Campbell said: "I do not admit that the Attorney General has any corporate or judicial character, or that he can be introduced into the record, as an actor or respondent in a suit. His duties are strictly professional duties, and his powers those of an attorney at law. Whatever he may do for the United States, a special attorney might be retained to do; nor can the United States appear in his name, nor by his agency, in cases where they may not be a party." Following an exhaustive discussion of the relation between the States and the United States, in respect to the jurisdiction of the Federal judiciary, he concludes, with a spirited assertion of judicial independence of Executive interference, saying: "Nor do I perceive that the Executive department has any title to disturb the parties or the Court, with the expression of anxieties or apprehensions that the Court will be lured to perform what Congress alone may do, or that these constitutional conditions will not be honorably fulfilled. The existence of this Federal Government, in its whole extent, is a testimonial to magnanimous and disinterested polity of the States of the Union; nor is the

concession, which submits to a tribunal of justice between sovereign States, the least weighty of the proofs of those dispositions. It seems to me that it is the duty of this Court to come to the exercise of the jurisdiction, the States have conferred, in the same spirit; to exercise it according to the letter of their submission, to exclude from it suspicions, jealousies, interventions from any authority, but to meet the parties to the controversy with confidence."

In *Dodge vs. Woolsey*, (18 How. 331), the plaintiff resident of another State, and a stockholder in the Commercial Bank of Cleveland, Ohio, filed a bill in chancery, in the Circuit Court of the United States, against the Directors of the Bank and the Tax Collector, for the purpose of enjoining the Directors from paying, and the Tax Collector from enforcing the collection of a tax imposed by the Legislature upon the bank, upon the ground that, by its charter the State had entered into a contract binding itself to a different system of taxing the property of the Bank. The defendant, tax collector, challenged the jurisdiction of the Court. Mr. Justice Wayne, writing for the majority, sustained the jurisdiction, and held that the provisions in the Charter constituted a contract preventing the Legislature from changing the method of taxing the property of the bank. Judge Campbell wrote a strong, dissenting opinion, in which Judges Daniel and Catron concurred. Denying the right of a stockholder of a corporation, without alleging collusion, fraud or negligence, on the part of the Directors to invoke the interference of a Court of Equity, respecting the management of the corporate property, Justice Campbell said: "The allowance of this plea interposes this Court between these corporations and the government of the people of Ohio, to which they owe their existence, and by whose laws they derive all their faculties. It will establish on the soil of every State a caste made up of combinations of men for the most part under the most favorable conditions of society, who will habitually look beyond the institutions and authorities of the State, to the

central government for the strength and support necessary to maintain them, in the enjoyment of their special privileges and exemptions. The consequences will be a new element of alienation and discord between the different classes of society, and the introduction of a fresh cause of disturbance in our distracted, political and social system. In the end the doctrine of this decision may lead to a violent overturn of the whole system of corporate combinations. . . . If this Court is to have an office, so transcendent as to decide finally, the powers of the people over persons and things within the State, a much closer connection and a much more direct responsibility of its members to the people, is a necessary condition for the safety of the popular rights. . . . The enquiry runs—have the people of Ohio deposited, with this tribunal, the authority to overrule their own judgment upon the extent of their own powers, over institutions created by their own government, and commorant within the State. The fundamental principle of American Constitutions, it seems to me, is that, to the people of the several States, belongs the resolution of all questions—whether of regulation, compact or punitive justice, arising out of the action of their municipal government, upon their citizens, or depending upon their constitutions and laws, are judges of the validity of all acts done by their municipal authorities in the exercise of their sovereign rights, in either case without responsibility or control from any department of the Federal Government. This, I understand to be the import of the municipal sovereignty of the people within the State.”

Answering the suggestion regarding the necessity for interference by the Court, he says: “It may be that the people may abuse the powers with which they are invested and, even in correcting the abuses of their government, may not, in every case, act with wisdom and circumspection. But, for my part, when I consider the justice, moderation, the restraints upon arbitrary power, the stability of social order, the security of personal rights, and the gen-

eral harmony which existed in the Country before the sovereignty of government was asserted, and when the sovereignty of the people was a living and operative principle, and governments were administered subject to the limitations, and with reference to the specific ends for which they were organized and their members reorganized their responsibility and dependence, I feel no anxiety nor apprehension in leaving to the people of Ohio a "complete power" over their government and all the instruments and establishments it has called into existence."

In *Baker vs. Robertson*, (18 How. 480), Judge Campbell wrote a very interesting opinion, in which he traced the origin and growth of the Chancery jurisdiction for winding up the affairs, and administering the property, of corporations whose charters had been forfeited. It is singular how doubtful, at that time, was the existence of the power and method of its enforcement. The subject is now, to a large extent, regulated by statutes.

No cases of special importance, or permanent interest, during the years 1854-1855 engaged the attention of the Court, in which Judge Campbell filed opinions, involving constitutional construction. The slavery question, in one of its disturbing phases, in 1856, came to create, or to develop, strong diversity of opinion, in the historic controversy, the echoes of which were heard far beyond the argument at the Bar, and the deliberation in the Conference room. This case, known in the judicial and political history of the Country, as the "Dred Scott case," (19 How. 395), demands more than a passing notice. Happily, the subject matter, out of which it grew, has ceased to have any other than an historical interest. It is difficult, and happily so, for us to understand the mental attitude, of the men of that day, regarding the status, and future, of slavery in its manifold aspects. It is, however, but justice to the members of the Court, who took part in the decision of the case, to ascertain what was decided. It was unfortunate that its merits should have been compli-

cated and obscured by the question of practice, presented by the decision in the Circuit Court, upon the plea in abatement. It must be conceded that, among the Justices, there is a lack of uniformity of view and opinion upon this question. This is but one of many cases in which, by reason of the functions of, and duties imposed upon the judiciary, State and Federal, in our system of Government, questions of larger import than are presented "upon the record," and interests of wider scope and more permanent effect than those of the parties litigant, are open to discussion and decision. In more than one of the leading cases, involving constitutional construction and interpretation, in our judicial history, the instant case may have been disposed of within narrower limits than those observed by the Court. It may be that sometimes Judges give way to the temptation of reaching out for "forbidden fruit." In every such instance those whose interests are affected, or who held political, or other, opinions, at variance with the conclusion reached, usually by a divided Court, have charged either that, that which is written is obiter, or that the Judges have been affected by other than judicial considerations. Many have undertaken to attack and to defend the Court from the charge of entering into a domain, not open to it, and the discussion and decision of questions other than those presented upon the record. Probably none have disjudicial spirit, than Professor Mikell, in his admirable cussed this question more intelligently, or in a more sketch of Judge Taney, (15 Great Am. Lawyers, 77). In respect to this phase of the subject, he says: "As a technical question of practice, the writer is of the opinion that Taney and his three associates erred in thinking the merits of the case before them, after deciding that the Circuit Court had no jurisdiction, just as he thinks Justice McLean, of the minority, was wrong in holding that the plea to the jurisdiction was not before the Court, but only the merits; but, that the question was then, not a settled one is apparent from a perusal of the opinions in this case, and the au-

thorities cited therein." As pointed out by Professor Mikkell, precedents were not then, and are not now, difficult to find in which Courts have, without criticism, pursued the same course. Judge Campbell was not disturbed by the question of practice. He says: "My opinion in this case is not affected by the plea in abatement, and I shall not discuss the questions it suggests." He proceeds to state the facts upon which, in his opinion, the case is to be decided, saying: "The claim of the plaintiff to freedom depends upon the effect to be given to his absence from Missouri, in company with his master, in Illinois and Minnesota, and this effect is to be ascertained by a reference to the laws of Missouri."

It will be observed that Judge Campbell does not express any opinion as to whether, if Scott had been a free person of African descent, he would have been a citizen within the meaning of the term, as used in the Constitution and the Judiciary Act, and entitled to sue in the Federal Court. He thus states his conclusion: "The eighth section of the Act of Congress of the 6th of March, 1820, did not, in my opinion, operate to determine the domestic condition and status of the plaintiff and his family, during the sojourn in Minnesota territory, or after their return to Missouri. . . . It appeared upon the trial that the plaintiff, in 1834, was in a state of slavery in Missouri and, that he had been in Missouri for near fifteen years in that condition, when this suit was brought. Nor does it appear that he, at any time, possessed another status or condition DE FACTO. His claim to freedom depends upon his temporary elocation from the domicile of his origin, in company with his master, to communities where the law did not prevail. My examination is confined to the case, as it was submitted upon uncontested evidence, upon appropriate issues to the jury, and upon the instructions given and refused by the Court upon that evidence."

Without entering into discussion of the merits of the opinions, filed by the other Justices, upon the question

of practice, and of status, in respect to citizenship, of a free person of African descent, it is manifest that Judge Campbell met and decided the vital question involved in the controversy. If he was in agreement with Judge Curtis that the Circuit Court had jurisdiction, he logically concurred with him in the opinion that he was "obliged to consider the question whether its judgment on the merits of the case should stand or be reversed." Judge Campbell was of the opinion that the status of the plaintiff was fixed by the law of Missouri, while Judge Curtis held that, upon the admissions in the record, his residence with his owner in the territory, within the provisions of the Act of Congress, dissolved the relation of master and slave. The merits of the plaintiff's contention, therefore, from the view point of Judge Campbell and Judge Curtis was dependent upon the effect of his residence, with his owner in Illinois and Minnesota and the validity of the Act of Congress known as the Missouri Compromise of 1820.

The power of Congress to prohibit slavery in territory acquired either by conquest or purchase and belonging to the United States, under the grant of power to make all needful rules and regulations, respecting such territory was, at that time, and has been since, the subject of divergent views, and conflicting opinion, in the minds of legislators and lawyers, statesmen and Judges. That it should have been so when the question involved in this case was presented for decision, certainly gave no ground for questioning the motives of any of the Judges, in respect to the opinions entertained by them. That there was ample room for debate is manifest from a careful examination of the opinions filed in the case. These divergent opinions were strongly stated and ably sustained. Mr. Reverdy Johnson, who was of counsel and took part in the argument said, upon the death of Judge Curtis: "Able as was the opinion of the majority of the Court delivered by Chief Justice Taney, it was admitted at the time, I believe, by most of the profession, that the dissenting opinion of Judge Cur-

significance to note that both Chief Justice Taney and Judge Campbell had voluntarily liberated all of their slaves some years before the decision was rendered. As far back as 1847, Judge Campbell wrote an article in the "Southern Quarterly Review," in which he advocated as a duty the amelioration of the law of slavery, and proposed the establishment of the legal relation of slaves in the family on a firm foundation, and the removal of restraints on voluntary emancipation, on education, and to abolish all sales under legal or judicial orders or process."

While Judge Curtis thought that his associates, upon reaching the conclusion that the Court had no jurisdiction to entertain the suit, should have directed its dismissal, he bore eloquent testimony to his "admiration and reverence for the preeminent abilities, profound learning, incorruptible integrity and signal private virtues, exhibited in the long and illustrious judicial career" of the Chief Justice. No one has expressed, in finer spirit, or manner, the correct view of this controversy and its participants, than Mr. George Ticknor Curtis, of counsel for the plaintiff, and the brother of Judge Curtis. At the meeting of the Bar of the Supreme Court, at the time of the death of Judge Campbell, he said: "I am the only survivor of all those who took part in the argument and decision of the famous Dred Scott case. I know more, perhaps, of the internal history of that case than any other person who is now living. I do not propose to detail that history now—but it is due to the Southern Judges, who sat in that memorable case, to speak of their positions, and the doctrines which they maintained. The time has come when justice can be done to those who have passed away, and when history can perform its appropriate office." After stating the points in controversy, in regard to the right of the Southern people to carry their slaves into the territories, the public domain, in which all of the people had a common interest, he says: "It seemed to be founded in an equality of right as between the different sections of the Union, re-

garded as slave-holding and non-save-holding States.. It is not surprising, therefore, it never has been to me, that Judges of Southern birth and training ,accustomed to this form of property, which lay at the basis of social life in those States, should have overlooked those considerations which made the claim untenable under the Constitution. Certainly they were bound to follow their convictions, and it seems to me that no impartial person can now examine their opinions, as pronounced from the Bench, without seeing that they expressed convictions most sincerely and honestly entertained. Not only did those opinions express convictions honestly and sincerely held, but it was supposed by those learned and upright men that, when the Supreme Court should have affirmed the constitutional doctrine, which they believed to be the true one, all further agitation and controversy would be ended. This was a great mistake and miscalculation which the sequel proved." One of the regrettable results of the controversy growing out of the case was the resignation of Judge Curtis on September 1, 1857. He gave to the President, as the reason for his resignation, that his "private duties are inconsistent with a longer continuance in the public service." This was strictly within the truth—but the correspondence published in the "Memoir" by his distinguished brother, discloses the fact, that this decision, and its incidents, hastened his retirement. It is creditable, to both Judge Curtis and himself, that Judge Campbell, on September 3, 1857, wrote him, expressing his regret at the decision he had made to resign, saying: "Had I been aware that such a measure was in contemplation, I should have placed before you an earnest remonstrance on the subject."

In *Jackson vs. Steamship Magnolia* (21 How. 296), Judge Campbell thought the jurisdiction of the Admiralty was carried to "an incalculable extent, beyond any and all others." The case arose out of a collision between the *Wetumpka* and the *Magnolia* on the Alabama River, about two hundred miles above tide water. Upon objection to

the jurisdiction, the District Judge dismissed the libel. Upon appeal, the Court, Judges Campbell, Catron and Daniel dissenting, reversed the judgment and sustained the jurisdiction. For historical research, defence of the common law system of trial with a jury to decide the facts—defence of the reserved rights of the State, to provide for the trial of causes accruing altogether in their own boundaries, and protest against the tendency to enlarge the jurisdiction of the Admiralty Courts, this is the strongest of Judge Campbell's dissenting opinions. With all of his learning in, and veneration for, the civil law, he gives strong and eloquent expression of his admiration for the Courts, which proceeded according to the course and practice of the common law. After quoting those portions of the Constitution guaranteeing trial by jury and due process of law he says: "These, and others of a like kind, identify the men of the Revolution as the descendants of ancestors who had maintained, for many centuries, a persevering and magnanimous struggle for a constitutional Government, in which the people should directly participate, and which should secure to their posterity the blessings of liberty, the supremacy of those Courts of Justice, that acknowledged the right of the people to share in their administration, and directed their administration according to the course of the common law, in all the material subjects of litigation—of that common law which springs from the people themselves, and is legitimate, by that highest of all sanctions, the consent of those who are submitted to it—of that common law, which resulted from the habitual thoughts, usages, conduct and legislation of a practical, brave and self-relying race, was established in England and the United States only by their persevering and heroic exertions and sacrifices. Magna Charta from which a portion of the Constitution was extracted was, according to Lord Brougham, "a declaration of existing and violated rights." Beginning with the statutes of Rich II, he traced the legislation in England, restricting the

pretensions of the Courts of the Lord Constable and Earl Marshall and the Lord High Admiral. He showed how, in the reign of George III the extension of the Admiralty jurisdiction was a prominent cause of the American Revolution, referring to the resolution prepared by John Adams, the "Coke of the Revolution," containing instructions to their representatives, averring that "next to the revenue itself, the late extensions of the jurisdiction of Admiralty, are our greatest grievance, etc." By this extension of jurisdiction of Courts of Admiralty in all cases arising in the transportation of property, on the inland water ways, "The States are deprived of the power to mould their own laws in respect to persons and things within their limits, and which are appropriately subject to their sovereignty. The right of the people to self-government thus abridged—abridged to the precise extent, that a Judge appointed by another Government may impose a law, not sanctioned by the representatives or agents of the people upon the citizens of the State." At the same term in *Taylor vs. Caryl* (20 How. 583), the powers of the State and Admiralty Courts came under review. Judge Campbell, writing for a majority, held that, when the State Court, by the process of original attachment, seized a vessel, and pending the proceeding, a libel was issued out of the Admiralty for the recovery of seamen's wages, the jurisdiction of the State Court was not ousted, and a purchaser under the attachment proceeding, acquired a valid title as against a purchaser at a sale by the Marshal. This opinion brought from the Chief Justice a vigorous dissenting opinion, in which for himself and three of his associates, he defended the Admiralty jurisdiction in more spirited language than he was wont to use. He gave an interesting history of the conflict waged between the common law Courts and the Admiralty in England, attributing to the study of Coke's works, by American lawyers, their hostility to, and jealousy of, the Courts of Admiralty. The opinion is manifestly intended as an answer to Judge

Campbell's dissenting opinion in the Jackson case—both are ably sustained. The decision in neither case has been overruled.

On Jan. 1, 1861, of the associates whom Judge Campbell found upon the bench, in 1853, Judge Curtis had resigned. Judge Daniel died Dec. 4, 1860. The Reporter states that, during portions of this term, Chief Justice Taney, Judge Clifford and Judge Catron were absent on account of illness. The older members of the bar were passing away. In addition to these depressing incidents, the Presidential Campaign of 1860, with its results, bore heavily upon the mind and heart of patriotic men, both North and South—especially Southern men devoted to the Union of the States, who could not fail to foresee conditions which threatened its dissolution. It is doubtful whether there ever came to men of this cast of mind and character, a more severe test of duty than to the men of the South of the type of Judge Campbell in 1860-61—or whether men ever bore themselves with more unselfish loyalty to their convictions. I have no disposition or desire to say more than that, whatever differences of opinion honest, sincere men may have entertained, respecting ultimate political allegiance, it seems to me that these men pursued a line of conduct which entitles them to the honor and admiration of all who place proper estimate upon loyalty to a high sense of duty as they saw it. It was manifest that a very large number of citizens in the South Atlantic and Gulf States, regarded the election of Mr. Lincoln on the issues involved in the campaign as justifying, if not rendering it necessary for the protection of their rights, to withdraw from the Union. Judge Campbell, ten years before, publicly, and as the result of careful thought, study and consideration, expressed his opinion that "A State may dissolve its relation to the Union at its pleasure." He was equally emphatic, November 24, 1860, in the expression of the opinion that "the election of Mr. Lincoln * * * is not a sufficient cause for the dissolution of the Union,"

and again, November 26, 1860, that he had "no sympathy with those who would precipitate ours, or any other State, into consequences that can not fail, under any circumstances, to produce disaster and distress." While he held these views in regard to the right of the State to secede, and of the absence of a valid cause for exercising that right, his opinion in regard to the right of the Government to wage war against a State, was expressed in an address made to a mass meeting in Montgomery, August 13, 1850, that, "Whenever the Federal Government, and much more, when a single department of the Federal Government, upon a question of disputed title to property, shall venture to employ the army and navy of the Confederacy to subdue one of its members, it is clear that the very foundations of the Union are at once subverted.' It is not my purpose to discuss the correctness of the views held by Judge Campbell, and thousands of the most patriotic men of the South. The issue between them, and other equally patriotic men in the North, has been in its practical aspects, settled in the Court of final resort, when procedure by due course of law has been exhausted. But it can never cease to be a question of interest, nor can justice be done to character, the conduct of memory of men, until loyalty to their mental and moral convictions, to their intelligent, educated sense of duty, has been tried and tested. It is, in fixing their place in the estimate of men, and the history of their country, that in the forum of conscience, by the judgment based upon the verdict which time empannells, Judge Campbell stands vindicated, his memory is and entitled to hold a high place in our respect, admiration and veneration. So far as, in his position, it was proper for him to do, he counselled the people of Alabama against Secession. When, however, in the exercise, of what he regarded their reserved political right, they followed other counsel and, in Convention assembled, adopted the ordinance of Secession, there was but one course open to him. To follow it, demanded sacri-

fice and suffering—retiring from a position congenial to his taste—assuring him, during life, the enjoyment of the highest professional and civic honors, the opportunity for continually enlarging usefulness; he did not hesitate as to the path into which duty called him. Before taking the final step, he sought, in the most perilous position which a man can assume—perilous to his character, his reputation—the esteem of his own people, and the almost certainty of receiving injustice from others—voluntary intervention between sectional factions, and the effort to secure peace, by negotiation, when the parties concerned, were determined upon war. The State of Alabama adopted the ordinance of Secession, January 11, 1861. Much has been written—more or less controversial in character, respecting the course pursued by Judge Campbell between that date and May 1st, 1861, when he resigned as Justice of the Supreme Court. This is not the time, nor the occasion, for entering into the controversy, or discussing the differences which grew out of the course pursued by Judge Nelson and Judge Campbell on the one part and Mr. Lincoln and Mr. Seward on the other. They are recorded as a part of the history of the times. Partisans have given to them the coloring which suited their purpose. Fortunately he made the record, by which his motives and conduct can be judged, and it has come to us free from passion, prejudice or other disturbing element. He wrote: "It was opposed to the act of Secession of the State of Alabama. That opposition was open, public and declared. The cause for Secession was regarded by me as inadequate * * * My opinions were well known and had the effect to arouse against me, hostility and proscription. I was unwearied, in the winter of 1861, in my efforts to produce a settlement. Through the Hon. Montgomery Blair, I opened a communication with President Lincoln and offered to be the medium of a communication to the people of Alabama. I was consulted by Mr. Crittenden upon his resolutions. I attempted to procure commissioners to be

sent to the States to engage them to postpone action. Mr. Buchanan at one time consented to do this. I aided in the consultations of members of the Peace Congress. I endeavored to avert the calamities of war by preventing military collision. I was a Union man and believed that a few months of peace would save the Union. I have this opinion still." When he found that he could render no further service to the cause of peace he resigned and returned to his home, surrendering the most dignified, honorable and, to a lawyer, desirable position which can be conferred on an American citizen.

It is, therefore, at this period of his life that we may pause and estimate the character and quality of the service rendered by him in judicial station. In noting, and quoting, from several of his dissenting opinions, I would not create the impression that he was, in any sense, a "dissenting Judge"—although our judicial history, both State and Federal, vindicates, not only the propriety, but the high, and frequently, essential, service rendered by well considered, strongly sustained, dissenting opinions. Judge Campbell wrote a large number, and his full share, of opinions "for the Court." In cases involving real estate in Texas, California and other new States, his opinions sustained, and rendered secure, titles, harmonizing French and Spanish laws with the principles of American jurisprudence, State and Federal statutes. In his opinions in cases relating to contracts, negotiable instruments and corporations, he adhered to fundamental principles and authoritative decisions.. His dissenting opinions bring out more clearly his method of discussion—independence of thought and vigorous style of expression—they express convictions deeply rooted in his mind and forecast his course when he returned to the bar. He was, as a strict constructionist of the Federal Constitution, sensitive to infringement upon the reserved domain of State legislation, and the independence of State Courts. He knew full well, from his study of the history of institutions and nations, that one of the

most insidious agencies in absorbing contralized power, at the expense of local self-government, had been found in the amplification and enlargement of jurisdiction by the judiciary. He saw, in the development of business and industrial corporations, with their inevitable expansion, in numbers and power, that they would seek to find a shelter from State control, in the Federal Courts. It is not my purpose to claim finality for his opinions—this he did not do. He recognized the fact that the questions discussed were in the domain debate and an unexplored field of development. His opinions were sincerely held, and strongly supported—in many respects his apprehensions have been realized. It does not indicate want of loyalty to the Union, and its judiciary, that he insisted upon the observance of well guarded limitation upon its Constitutional powers. The mariner who studies diligently, and keeps well within the limitations of his chart, is not only a wise, but a safe navigator. He will steer his ship so that, being kept within the channel, she will avoid shoals and shallows and, with more certainty, come safely into port, than one who, following “the rambling lights,” luring into wider waters, endangers the safety of his ship, and invites ultimate disaster. It may be that, in the enlarged and constantly enlarging, sphere of jurisdiction in which Federal Courts are moving, expanding commerce, interstate and international—the vast financial institutions and industrial activities, with their complicated inter-relations and relations to the public, and necessity for wise adjustment of the relation between capital and labor, all interests are better conserved by national control, construed and enforced by Federal Courts,—this, like so many debatable questions in our complex system and complex civilization, must be tried and tested by experience—no man can speak the final word. However this may be, the conservative influence, the steady power of a great Judge is always wholesome and healthful—and nowhere more so than in our system of government, with its checks

and balances—so essential to the preservation of the powerful, and yet delicate, political and judicial, mechanism of a Democratic Federal Republic.

Any estimate of the service rendered by Judge Campbell which overlooks, or neglects to take note of, his labors, as presiding Justice in the Circuit Court of the Ninth Circuit, is incomplete. During the years of his service, the Justices, with regularity, attended upon the Circuit Court and, with the District Judge, conducted its business. One of the oldest and ablest members of the Bar of New Orleans, says: "The appearance of Judge Campbell on the Federal bench was all that could be desired by the friends of order and good government. His presence attracted the attention of the public and his way of controlling and dispatching business justly brought him the reputation of being a great Judge. His presidency in the Circuit Court constituted an epoch in its history."

While Judge Campbell strictly construed the limitations upon the Federal Court, he accepted and acted upon the sound and salutary principle announced by Judge Marshall, that the Court dared not usurp jurisdiction and dared not shirk it. In vindicating and enforcing obedience to National laws, he was firm, courageous and unswerving—without regard to persons or other considerations. Soon after his appointment, it became his duty to preside at the trial of many prominent citizens, including the then Governor of Mississippi, for violation of the neutrality laws in connection with the filibustering expedition to Nicaragua and Cuba—a great outcry was made of oppression through the Federal Courts. One who was connected with the Court, says: "No man could have borne himself with more dignity or wisdom, in the severe ordeal to which he was then subjected. He was firm, courageous, temperate and wise * * * There never was a nobler spectacle, presented in a court of justice, than of this magistrate wisely and calmly controlling turbulence and vindicating the majesty of the law."

Upon his resignation, Judge Campbell returned to his home and resumed the practice of the law.. The expression of his opinions in regard to the course pursued by the people of the State, for a time, rendered him unpopular. He says: "Upon my return to Alabama, 1861, I found that there was a very strong feeling of opposition and hostility to me. I made no attempt to obtain office or employment under the Confederate Government. I received no offers or overtures from those controlling it * * * I did not suppose that the war would be a transient one, or that it would be brought to a close by the lucrative desires of the Northern States for cotton * * * or by privateering, or foreign intervention * * * In point of fact, I simply resumed my position as a private citizen." He was, because of the many questions arising upon the construction of Acts of Congress, strongly urged by Mr. Randolph, Secretary of War, to become his assistant. Acting upon a sense of duty, he finally accepted the position, October, 1862. He says: "The office was one that imposed irksome, uncongenial and, in most cases, trivial labor. I do not doubt that I alleviated much distress—mitigated the severities of the war to some persons, enforced justice and order in many instances, and won the respect of those having connection with the office, by a firm, impartial and benevolent administration. * * * All I mean to say is that, under the difficult circumstances of the time, in a subordinate and comparatively unimportant office, I found the means to do a great deal of good. I diminished the weight of the heaviest calamity that ever befell a country, to many."

Becoming satisfied that some action should be taken looking to bringing the war to an end, in the fall of 1864, he conferred with the Secretary of War, and members of Congress. In December, 1864, he addressed Mr. Justice Nelson, an elaborate letter inviting a conference with him and, if possible, Messrs. Ewing of Ohio, Curtis of Boston, and Secretary Stanton, to ascertain whether measures for

peace could not be set on foot. Two copies were sent, with the concurrence and sanction of Hunter and Seddon, in December, but no answer was received. This preceded Mr. Blair's visit to Richmond and was the first effort, that he knew of, which resulted in the Hampton Roads Conference, of which Judge Campbell was a member. The history of that Conference, with its incidents and result, bringing more or less controversy, so far as Judge Campbell is concerned, has been written into the history of the times—it is sufficient to refer to the memorandum drawn up by him, and signed by the Conference Commissioners. It is of interest, however, to have the impression made upon him, by Mr. Lincoln's statement and conversation. He returned to Richmond impressed with the conviction that further effort should be made to bring the war to an end on the lines suggested by Mr. Lincoln. This opinion was concurred in by many Senators, Members of Congress and citizens. Judge Campbell has left an interesting record of his efforts to promote the plan which he thought should be pursued. He says that, at the request of Governor Graham, then Senator from North Carolina, he addressed a letter to him "explaining Mr. Lincoln's views, how they would leave the Confederate States and urging the effort to accept the terms he held out." This letter was used among the Senators in consultation and a committee was appointed to confer with Mr. Davis upon the subject, who returned an unfavorable answer. He addressed a letter to General Breckenridge, Secretary of War, in regard to the state of the finances, the Army and other matters of vital importance to the continuation of the war. At his request, he visited Mr. W. C. Rives, then a member of the Confederate Congress, who was confined to his room by sickness. Mr. Rives requested Judge Campbell to give him information, in regard to existing conditions to enable him to confer with General Lee, relative to opening negotiations for peace. "Neither of us had

any confidence in any successful issue, and both spoke with freedom of the future. Both looked forward to a period of public calamity." Mr. Rives said that he would not live to experience much of it, but we should "Be constant, firm and hopeful." Resolutions were prepared declaring, "That the President be advised to propose to the enemy, through the General in Chief, an armistice preliminary to the re-establishment of peace and union and for the special purpose of settling and ascertaining certain points incident thereto, a restoration of the Union, and particularly to ascertain whether the seceded States, on their return will be secured to their rights and privileges as States under the Constitution of the United States." These resolutions were handed by Judge Campbell to Governor Graham, and the Secretary of War. Governor Graham, after consultation with other Senators, returned them to Judge Campbell, saying that he approved them, but nothing could be done. Thus ended the third effort of Judge Campbell to bring the war to an end to secure peace to the country. It is interesting to find, in a letter from Mr. R. M. T. Hunter to Governor Vance, June 6, 1880, that he was in perfect agreement with Judge Campbell, in regard to which sincere, patriotic men, then and ever since, have differed. The office of peacemaker, while commanded, with promise of Divine blessing, is a difficult one to fill in the affairs of men and of nations. I venture to think that the experience of lawyers and Judges in the sphere of individual litigation, a species of warfare, in the struggle for law, no less than statesmen in the domain of diplomacy, teaches the same lesson—they seldom satisfy either of the parties to the controversy—and must be content to find their reward in the consciousness that they have, usually, rendered high and valuable service to their clients, and those for whom they are called upon to act and await other reward until "life's fitful fever is over." Judge Campbell did not cease in his efforts to serve his people. He writes: "All these efforts being abortive, I could only

await the ruin certain to arrive. * * * I determined to remain in Richmond when evacuation should occur, and renew my obligations to the United States. * * * I had a conference with the late President, in which I informed him of my position. I informed him that efforts for peace had been made during the winter and that the most prominent public men of the State were ready to aid in the work of pacification, and that if he would call them together, the work would be nearly done. 'That when wickedness and cruelty play for the conquest of a Kingdom, the gentlest player will be the soonest winner.'" He appointed a second interview the following morning and exhibited a broad, liberal, generous, magnanimous form of settlement that endears his memory to me. My connection with President Lincoln was a connection of good faith and unfeigned desire to secure peace in a permanent and abiding form for this Union." Mr. Lincoln authorized the General in command in Richmond to take steps for calling the members of the Legislature of Virginia to Richmond, but upon his return to Washington, acting upon Mr. Stanton's advice, he rescinded the order. Judge Campbell was arrested and imprisoned in Fort Pulaski. Judge Nelson and Judge Curtis interested themselves in his behalf and ,after several months, he was released and returned to his home. He took the oath required by law and made application for amnesty pursuant to the President's proclamation. He never applied to have his political disabilities removed, although assured by Senator, later Vice-President, Wilson, that the requisite vote could be secured. He insisted that he had done nothing wrong in respect to the war and its incidents. His opinions, in regard to the results of the war and the policy which should be adopted, are stated by him while at Fort Pulaski. "I concur in the policy of abolishing slavery throughout the United States. I regard the Revolution as the most radical and momentous that has ever occurred in any country. Much of the burden will fall upon the

people of the Confederate States. It changes the conditions of nearly all as to fortune and the temporal prosperity. It requires for its success wisdom, prudence, patience and patriotism." As with so many other Southern men, Judge Campbell, when he returned to his home, past middle life, found his estate destroyed, or rendered of little value, the people among whom he had spent his life and with whom, in their common misfortune, he determined to remain, were impoverished. Dr. Alderman, referring to the men of another revolution, says: "There is an element of infinite sadness in the attitude of all men who have lived through great revolutions. They have virtually lived in two worlds and only those possessing the highest wisdom * * * can survive the shock. Great movements in society, like great changes in nature, are marked by cruelty, violence and injustice." Like all of the South's finest, strongest, bravest and best manhood, absolutely loyal to all that was best in the past, sensitive to the wrong and injustice imposed upon his State and Section, Judge Campbell indulged in no vain regrets, nor refused to meet and discharge the duties of the present, but gathered the remains of his broken fortune, began anew the labors of his profession. There was no weak pining over an irrevocable past, but only brave words and high resolve to discharge the duties of the day. In these days of national unity, and general prosperity, when the spirit of a united America is responding to the call for national sacrifice and service, it is well for us to understand, and teach not only our own children, but those who are of the North and West, the hearts of whose fathers were then filled with the pride of military success, and the passion of political and sectional controversies, of the character and moral courage, of the men of the South of 1865. But for them, and their influence, the temporary success of a policy which came well nigh indefinitely postponing real national unity, destroying purity in the administration of law, and disrupting the foundations of our civilization, would have

made of the South a land of ruin and discord, sacrificing the honor, glory and welfare of the Republic. We can never do overmuch honor to their memories.

Seeing in the City of New Orleans a larger field for usefulness, and the discharge of duty to those dependent upon his labor, Judge Campbell moved there during the latter part of 1865. An honored member of the bar of that city, who knew and admired him, writes: "It has always seemed to me that the larger field for professional effort which Judge Campbell found in New Orleans, and the cosmopolitan character of the community had special attractions for him from the beginning." Probably no one of the Southern States, and no city of the South furnished so large number of questions, and such variety of novel, difficult, interesting and important litigation, affecting not only large private interests, but public interest and welfare, as Louisiana and New Orleans. Judge Campbell found there a bar of exceptions learning, ability and experience—he was warmly welcomed by bar and people and at once recognized as being in the front rank.

I am indebted to the personal recollection of one who had the opportunity of watching, and the capacity of appreciating, his career. He writes: "Coming to the practice at the bar of New Orleans, he threw himself into the contests, in which he became engaged, with a degree of intensity which it is difficult to express. He became absorbed in his professional undertakings. He would sit for hours in his great library lost in thought, without turning the leaves of the volume open before him. At other times he would walk the streets, gesticulating as he went, to the surprise of all who passed him. He spoke in Court customarily from the many books spread out before him. His language seemed to be borrowed from the books, and was apt to be technical and quaint, as the authorities themselves. His style, for the most part, was measured and grave, as became his years and standing at the bar. From time to time, however, as he caught fire from the concus-

sion of debate, he became inflamed and fierce in his assaults upon his adversary's side. There were occasions, seldom coming, but full of excitement as they arrived, when his utterances were filled with a degree of eloquence which aroused in those who knew him, like feelings and passions with those with whom the speaker himself contended." I have been favored with the privilege of examining three volumes of Judge Campbell's printed briefs, largely of cases argued in the Supreme Court of the United States. They exhibit a wide range of litigation, presenting questions of great difficulty and of novel character. They involve questions of commercial and corporation law and litigation growing out of political conditions. The absorbing interest with which I have made a study of the life, character and labors of the great lawyer, Judge and citizen, has carried me beyond the bounds, marked by this occasion. I can not trespass upon your courteous patience further than to make inadequate reference to a few of the great causes, of State and National import, which he argued before the Supreme Court and the estimates put upon the work which, during the last twenty years, he performed. He secured, without question or controversy, the position at the bar accorded to his associate on the bench, Judge Curtis—a position among the great lawyers of his day—*primus not inter pares but inter omnes*. Passing his argument in 1851, and again in 1888, in the litigation which occupies a not less interesting than unique position, in our judicial history, waged for more than fifty years, by Mrs. Myra Clark Gaines, the many cases involving the foreclosures of mortgages, adjustments of priorities, reorganization of railroad companies, cases involving title to valuable lands, municipal obligations, validity and interpretation of wills, etc., I confine myself to his arguments in two cases, which stand out in the magnitude of the interests involved and the questions of constitutional law presented, as landmarks. Because of the subject matter, the extent of the power of the Legislature

of a State to create monopolies, and of the construction and limitation placed upon the Thirteenth and Fourteenth Amendments no decision of the Supreme Court, in recent years, develop more widely divergent views, regarding the changes wrought in the character of our government, than the Slaughter House Cases (16 Wall. 36). It is stated that in their argument Judge Campbell "Seemed to have levied a contribution on the literature and learning of the world to enable him to show the intolerance of the common law, of monopolies, and to furnish authentic examples of the almost infinite devices by which the strong have, in all countries, and in all ages, managed to destroy or curtail the right of every individual to exercise his faculties in any way that might seem good in his own eyes, saving of course, the right of others, and as a basis for his powerful contention that, while African slavery as it had existed in the Southern States, was the occasion for the provision of the Constitution putting an end to slavery or involuntary servitude, the language of the constitutional amendment had a scope far beyond the occasion that caused its use, and applied to all attempts to frustrate the Heaven-descended right of man to exercise his faculties in his own way." He traced the origin and history of slavery from the earliest periods, and in all countries—the various kinds of bondage, with their origin and characteristics. He contended that the word "servitude" had a different, and larger, meaning, was more inclusive, than "slavery," and was so understood and used in the Ordinance of 1787, after which the Thirteenth amendment was modelled. He rested his case, however, with more confidence, on the comprehensive terms of the Fourteenth Amendment. The portion of his argument, in which he attacked the Act of the Legislature, conferring monopolistic powers upon the corporation, contains an exhaustive review of monopolies, in every form. . It is a mine of learning, historical and legal. Referring to the claims set up by the corporation, based upon its legisla-

tive character, he says: "If the Legislature can barter away, to a corporation, exclusive privileges, and strike the land with disabilities, the land will soon become a desolation and a waste."

He thus concludes his argument: "What did the Colonists and their posterity seek for and obtain by their settlement of this continent; their long contest with physical evils that attended their colonial condition; their long and wasting struggle for independence; by their efforts, exertions and sacrifices since? Freedom—free action—free enterprise—free competition. It was in freedom they expected to find the best of auspices for every kind of human success. They believed that equal justice, the impartial rewards which encourage effort in this land, would produce great and glorious results. They made no provision for sinecures, pensions, monopolies, titles of nobility, privileged orders, exemptions from legal duty. What they did provide for was that there should be no oppression; no pitiful exaction by petty tyranny; no spoliation of private right, by public authority, no yoke fixed upon the neck for work, to gorge the cupidity and avarice of unprincipled officials; no sale of justice nor of right, and there should be a fair, honest, faithful government to maintain what were the unchartered prerogatives of every individual man, and are now the constitutional inviolable rights of our American citizen."

While he failed to convince the majority of the Court that the corporation had, by the exercise of its chartered privileges, and enforcement of its monopolistic powers, denied or abridged any rights or privileges of complaint, within the terms of either amendment, his argument constitutes one of the strongest presentations of the subject, in our judicial history. That he was met in the debate by Mathew H. Carpenter and Jeremiah S. Black is conclusive evidence that it was a battle of the giants. Judge Miller, for the majority, wrote an opinion which, although criticized by those who stood for more complete nationaliza-

tion of the Constitution and the Republic, is now accepted as the correct interpretation of the amendments. Justices Field, Bradley and Swayne each wrote dissenting opinions, in which Chief Justice Chase concurred. Thus, by a vote of five to four members of a very strong Court, this question of far reaching import in our constitutional development, was settled. The antecedent political alignment of the Justices relieves the decision of any significance in that respect—none of them were of Southern birth or antecedents. Judge Miller was of strong Republican conviction, whereas Chief Justice Chase was of Democratic alignment, prior to the Civil War.

There is evidence that Judge Campbell recognized that, in respect to the construction of the Amendments, "It was better for the country that it had so turned out." The larger and more insistent question regarding the power in the State Legislature to create corporate monopolies, as it has been, will ever be, of vital importance. The brief and argument of Judge Campbell is a mine of learning and an arsenal of argument, in which the defenders of the rights of the people, against the demands of these theoretically intangible entities, but practically most substantial agencies of commercial and industrial development, with an inexhaustible craving for monopolistic power, and privilege, will always find unbounded and valuable resources.

The States of New Hampshire and New York, during the year 1880, seeking to evade the provisions of the Eleventh Amendment, invited their citizens, holding bonds, issued by any of the other States, payment of the interest or any part of the principal of which was in default, to assign such bonds or obligation to the State, whereupon the assignor, having indemnified the State against loss on account of the cost of litigation, the Attorney General of the State was directed to bring suit in the name of such State, in the Supreme Court of the United States against the defaulting State for the recovery of the amount due for

the use of the holder of such bond.. Pursuant to the provisions of the act, citizens of New Hampshire and New York assigned bonds to these States, and bills in chancery were filed against the State of Louisiana. The causes came on for argument at the October Term, 1882. The State of New Hampshire was represented by Mr. Wheeler H. Jeckham, Mr. Russell, Attorney General, David Dudley Field and William A. Duer, appeared for New York. Judge Campbell and Mr. Egan, Attorney General, represented Louisiana. After stating the immunity guaranteed to the State from suit as declared of the Eleventh Amendment, he says: "This immunity is an incident of sovereignty and has existed since the Declaration of Independence, during the Confederation, and is formally declared in the Constitution of the United States. That this immunity ought not to be evaded, nor infringed by any indirection, collusion, contrivances, simulation, or friction, in modes of judicial procedure, but should be maintained in the exactness of the letter and fullness of the spirit of the Constitution." In these words we hear the echo of the controversy held by him in *Georgia vs. Florida*. By his irresistible argument and invincible logic, he carried with him the judgment of the unanimous Court. He quoted the declarations, in the formative period of the Constitution, of Marshall, Madison, Hamilton, Rutledge, Ellsworth and others, who took part in the making, and the ratification of the Constitution. He showed the attitude of the statesmen of Massachusetts and Virginia upon the decision, over the dissent of Iredell, in *Chisholm vs. Georgia*. He gave the history of the Eleventh Amendment introduced by Caleb Strong, a Senator from Massachusetts—the rejection of all amendments and substitutes, and the support, on its passage, of Fisher Ames, Samuel Dexter, James Madison, Nathaniel Macon, George Cabot and Rufus King—and its adoption, in the Senate, by a vote of 23 to 2 and the House by 81 to 9. He called into his service the writings of statesmen and jurists, French, English and

American. Any attempt to analyze, or abbreviate, his argument would give but an adequate idea of its power and eloquence. It must be read and studied in its completeness to be appreciated. The bills were dismissed. The argument was made when he had reached the age of seventy two years—his great mental powers gave no evidence of deterioration or abatement. Mr. Maury said, that in these cases Judge Campbell “displayed the same remarkable ability and research as he had shown in the Slaughter House cases, argued some years before. He left nothing to be said or desired on the rationale of government exemption from suit.” Mr. Bancroft wrote of the arguments: “I know not whether to admire them most, for their just exposition of the Constitution, or their general ability and truth seeking thought.” Hon. Thos. J. Semmes says: “I heard the argument, the Court room was crowded with distinguished auditors. The Court and audience listened with rapt attention to the great lawyer as he demolished one after another the propositions of his antagonists. * * * When he closed his splendid and luminous argument, which for erudition, research, breadth of view, political and historical knowledge and constitutional lore, surpassed any I ever heard, he stood confessed the greatest lawyer in the United States.”

Judge Campbell left unmistakable evidence that he considered the argument, and decision, of the cases of New Hampshire and New York vs. Louisiana the culmination of his legal career, as they established what he always contended that the Constitution guaranteed—State sovereignty. Chief Justice Waite declared it the greatest argument he heard while a member of the Court. At the October Term, 1885, he argued the Railroad Commission cases. In addition to his arguments in the State and Federal Courts, Judge Campbell, refusing to accept employment from Kellogg, appeared for the State of Louisiana before the Electoral Commission of 1876. His power of invective was illustrated in his denunciation of those who had been in

possession of the State Government. He said: "The Court must observe, from what I have already exhibited of the laws of the State, that the State is in possession of an oligarchy of unscrupulous, dishonest, corrupt, over-reaching politicians and persons who employ the powers of the State for their own emolument. There is no responsibility on their part to any moral law or constitutional or legal obligations. For years they have usurped the powers of the State by means that have brought upon them the condemnation of the Senate of the United States, of the House of Representatives of the United States and, I may say, of the whole people of the United States. Those practices have been covered, immunity has been granted to them, because of their intercourse and connection with the politics and the parties of the Union; without that connection they would not stand in that State for a single hour. By their association, they have prostituted every material, and endangered every moral interest, within the limits of the State."

On February 13, 1883, Mrs. Campbell died. Of her it was said, "She was highly educated, of marked literary taste, great force of character and ambition, by temperament—the companion, the friend and the counsellor of his life, for more than fifty years."

In July, 1884, Judge Campbell removed to Baltimore. He continued to argue cases in the Supreme Court until March 13, 1889, at the age of seventy-eight years, he passed away. He left surviving him Mrs. Henrietta C. Lay, wife of Col. George W. Lay, Mrs. Kate Groner, wife of Col. V. D. Groner, Miss Anna Campbell and Mrs. Clara Colston, wife of Mr. Frederick M. Colston, of Baltimore. His only son, Duncan Green Campbell, died several years before the death of his father.

Judge Campbell was a communicant and regular attendant upon Grace Protestant Episcopal Church from which his funeral was conducted. Among the pall-bearers were Senator James L. Pugh of Alabama, Senator R. L.

Gibson of Louisiana, and Hon. Walter L. Bragg of Alabama. His kinsman, Justice L. Q. C. Lamar, represented the Supreme Court. A large number of prominent citizens from Baltimore and other cities were present. He was buried in Greenmount Cemetery. At a meeting of the bar of the Supreme Court of the United States, April 6, 1889, held for the purpose of giving expression to the sense of the loss, which they, in common with the whole country, had sustained in the death of Judge Campbell, Mr. George Ticknor Curtis presided. Judge Hoadly, of Ohio, paid a handsome tribute to his learning, and ability, referring to him as "one of that company of giants over which Roger B. Taney presided." He said: "I knew him well, as the defeated knows the conqueror, for in two of the most memorable cases of my life, I was captive of his bow and spear. * * * He was a man of noble presence and, until his powers began to fail, with increasing age, of great physical power. His tall form, his dignified and impressive presence called for immediate respect, even before the weighty argument required assent." Mr. Evarts said: "There is no danger that the interval in Mr. Campbell's public relations to the country at large, which the Civil War produced, will affect the judgment of our profession, and through them, the people of the whole country, in their esteem of the value of his great services and of those traits of character and lines of conduct that entitle him to be permanently remembered. Mr. Curtis spoke with generous enthusiasm—his words carry added weight because, in some measure, they gave expression to the estimate of his equally distinguished brother, Judge Curtis. He said: "More than once, cases which would have been decided wrongfully, if decided by the judgment of the other members of the bench, were given a right direction by his knowledge of the local law and usages of the States composing his circuit. His familiarity with both the civil and the common law, and his extensive learning, enabled him to be of very great service to the other mem-

bers of the Court. * * * He ranks with the greatest advocates of our time, not for eloquence, not for brilliancy, not for the arts of the rhetorician, but for those solid accomplishments, for that lucid and weighty argumentation by which a Court is instructed and aided to a right conclusion. * * * These accomplishments were possessed by Judge Campbell in a very uncommon degree. He has lived to a great age, and in the whole of his long life, there has never been a public act or utterance that is to be regretted."

Upon the motion of Mr. George F. Edmunds, Rev. Arthur C. Powell, the Rector of Grace Church, Baltimore, paid a beautiful tribute to his life and character in the relations of the home and the church. The resolutions, unanimously adopted by the members of the bar, were presented to the Court by the Attorney General, with appropriate remarks, and ordered to be spread upon the records of the Court, Chief Justice Fuller paying tribute to his "power of intellect, profound learning and unremitting diligence, coupled with integrity of mind and sincere love of justice." In the Supreme Court of Louisiana resolutions adopted by the Bar were submitted by Hon. E. T. Merrick, setting forth the profound regret at his death and testifying to their great respect for his memory. They declared that "His record is clear, his success a triumph, his ambition in life was not in the line of political preferment, but rather to be known as a great and successful lawyer, to do good things, to achieve great things. He loved the profession of the law. He pursued his plan with consistency and with a concentration of purpose rarely exhibited. His intellect was massive, his learning profound, his instinct judicial, his judgment sound. With his indefatigable industry and his robust character, he explored every domain of literature to find illustrations and precedents to support and illumine the resources of his great mind. With his massive and solid intellect he combined the weight and force of an irreproachable character. With

a feminine sense of propriety he was tender to the unfortunate, charitable to the afflicted, gentle to the meek." Attorney General Walter H. Rogers, and Hon. Carleton Hunt spoke touchingly and eloquently in seconding the resolutions. The Chief Justice, in accepting them, said: "His loss to the profession, which he adorned, to the bench, which he graced and denlightened, and to the commonwealth, whose welfare he had at heart and ever defended, is immeasurable and will ever be felt. His illustrious name, encircled an aureole of glory, will remain an object of veneration, so long as lawyers plead at the bar and judges shall administer justice on the bench." In the Circuit Court of the United States at New Orleans, the Hon. Thos. J. Semmes, the acknowledged leader of the Bar, submitted the resolutions prepared by the committee, in an address of classic precision and eloquent diction, reviewing the life and labors, and paying tribute to the character of Judge Campbell. Among other tributes, Mr. Semmes said: "The speeches of Judge Campbell were free from sneers at piety or religion. With him reason and faith render the same sound to all eternity, each in a different manner." Other addresses were delivered, Judge Billings, in accepting the resolutions, said of him: "Whoever saw him in the midst of the home circle saw the fullness and elevation of a husband's and a father's love—its playfulness and its restfulness, and its exceeding grace and beauty. His nature, like the hills, had enduring strength and, like the hills, though far up-lifted, was adorned with flowers and verdure."

Hon. Hannis Taylor, practicing as the partner of Mr. Alfred Goldthwaite in Mobile, saw much of Judge Campbell, subsequent to his removal to New Orleans. He writes: "From frequent conversation and correspondence with him, I had an insight into his character, which was very lofty and impressive. When he came from New Orleans to Mobile, as he often did, after the Civil War, the people would gaze at him as he passed along the streets. His

personal majesty overcame you—it was almost oppressive, even when he was most friendly. * * His power to labor was prodigious, his great physical endurance was fortified by absolute temperance in all things. He seemed to make all learning his province, he became a master of both Roman and English law. * * * Wherever he moved he ruled like a Prince by his wisdom, his learning, his virtue, his sense of justice, his unbending courage. Next to Chief Justice Marshall he was beyond all question the South's greatest contribution to the Supreme Court of the United States."

The tribute paid, by one who knew him, in all of the relations of life, appeals to me most strongly, "Diligent, careful, learned and just, he was looked to as a model Judge. To the evil doer he was stern, to the unfortunate and weak he was tender. In his life he was pure and simple. In his administration of the law he was inflexible and courageous."

At the Session of 1884, your Executive Committee, addressed to Judge Campbell a letter inviting him to perform the office with which I have been honored. The committee said to him: "In selecting you for this service, the Bar Association of Alabama feels proud that its choice is one whose acquirement as a jurist and a statesman, eminence as a citizen, and character as a man, will give dignity and importance to its meeting, and whose presence will shed honor upon the Association. And the Association feels a special pleasure in knowing that this choice is one on whom the esteem and affections of the people of Alabama have so long rested, that they have not ceased to claim him as their own."

In a letter bearing date March 9, 1884, referring to the fact that "fifty-four years ago today," he arrived at the then village of Montgomery and became a member of the Bar of Alabama. He refers to the necessity which he had experienced of curtailing "the circuit of professional and physical exertion," saying, while he could not promise to

make the address but, if able, he would prepare one to be submitted to the committee as an answer to their "gracious request." This promise he performed. I can not better conclude the discharge of the duty imposed by a similar gracious request than by commending a frequent reading and careful study of his last message to the Alabama State Bar Association. In it are words of wisdom, of counsel, of patriotic affection and inspiration to the citizens, Bench and Bar of the State. "Stand fast to the liberty wherewith you became free and of which the Constitution has been the witness. Be constant and firm to insist that the State shall be maintained in the fulness of the powers reserved by the Constitution which was made by the people of the States. The State is the repository where the family is formed and, with this, the source of domestic peace, where religion, morality, reverence, honor, humane affections are implanted, and instruction most purely imbedded. It is the State that most surely defends life, liberty, reputation, property, family obligations and rights. It is the State that teaches primary duties of manhood and which shields and protects womanhood in her purity and holiness."

"No State stands sure but on the ground of right,
Of virtue, knowledge, judgment to preserve,
And all the powers of learning, requisite."

Mr. Fitts:

Mr. President, I feel that I voice the sentiment of the members of this Association who have been privileged to listen to the very able address delivered by the distinguished jurist from North Carolina, when I move that the thanks of this Association be tendered to him, and as a further recognition that he be elected an Honorary Member of this Association.

Motion adopted unanimously by rising vote.

The Association adjourned until Friday morning at 10 o'clock A. M.

SECOND DAY.

Birmingham, Ala., July 13, 1917.

The Association met at 10 o'clock A. M. pursuant to adjournment, the President presiding.

The President:

The Association will please come to order. We will try to dispose of as much business as possible, as we will have to leave on the 11 o'clock car for the trip to the Steel Plant at Ensley, where the members of the Association will be the guests of the Tennessee Coal, Iron and Railroad Company.

Mr. John:

For the information of members of the Association who were not present yesterday, I will read that part of the report which you will consider this morning. The resolutions adopted by the Association a year ago are as follows:

"Resolved, That the President of the Association appoint a Committee of three members, who shall prepare an outline of all the essential features of a Bill for the 'Compensation of Workmen' for injuries received while engaged in their work, and deliver the same to the Secretary of this Association at least thirty days before the next Annual Meeting of this Association who shall have three hundred (300) copies thereof printed and distributed to the members of this Association ten (10) days before the next meeting.

2. That the Committee shall also prepare a similar outline of all the essential features of a Bill to provide a system of Registration and Insurance of titles to lands, deliver the same to the Secretary to be by him printed and distributed as provided in the first Resolution herewith submitted."

Now here is the House Joint Resolution:

"Be it Resolved by the Legislature of Alabama:

1. That a commission consisting of the Governor, Chief Justice of the Supreme Court, Presiding Judge of the Court of Appeals, the Attorney General and the Director of the Department of Archives and History is hereby appointed whose duty it shall be to make an investigation of the subjects of workman's compensation, registration and insurance of land titles, penitentiary and criminal administration, conservation of the natural resources of the State, and such other subjects as to the commission may be important.
2. That the commission shall submit a report of its investigation to the next ensuing regular session of the Legislature, together with bills, so prepared as to carry into effect such recommendations."

There are a great many lawyers and others insisting on having a commission to prepare a bill before they get to the Legislature. If you take up the question by legislative commission to do the work before the Legislature, and see how much work is done, you would never advocate the appointment of another commission. But you appoint them, four are lawyers out of five, and if a conference can be held and a bill prepared before the next annual meeting when we come together we can see what the commission and the committee do. They are not confined to any special subject. I hope the recommendation will meet the approval of the Association, and that a committee be appointed to confer with the learned commission. It is not going to be done by a few men who want their names published in the newspapers, but by somebody who will do the work. The conference will necessarily be held in Montgomery, which is convenient to the Supreme Court Library. I hope you will adopt that report.

Mr. W. C. Davis:

I hope that we will act separately, that the question of land titles and workman's compensation be acted upon separately. I am more interested in the compensation of workmen than I am about land titles. I have a resolution, which, with the permission of the Association, I will read:

"Resolved, That the President of this Association appoint a committee of five to confer with the State Commission on law reform to draft a report to the 1918 meeting a workman's compensation bill to be presented to the next Legislature for enactment, copy of such bill to be mailed by the Secretary of the Association to each member thereof at least thirty days before the 1918 meeting."

The purpose of the resolution, Mr. President, is that a committee will be appointed that will have one object in view, and its work confined to one subject, the drafting of a workman's compensation bill, this committee to be appointed by the President and to first confer with the commission raised by the act of the Legislature. It will be the duty of the committee to see that a bill is drawn and that it be reported thirty days before the next annual meeting. I did not provide for the essentials, I think the bill itself does, that it is to be presented to the Legislature, or in the judgment of that committee should be drawn and every member of the Bar Association should be furnished with a copy of it, and when we come here a year from now, having had an opportunity to study the proposed law and discuss it we can act on it. If it should be sprung on us now there are members of the Association that would not be prepared to act. Workman's compensation is rather a new question to a great many lawyers in Alabama. Quite a number of bills were presented in the last Legislature and every bill, so far as I can recall,

presented almost an entirely different theory and would have had different results from each and every bill on the subject. It is going to be a difficult question, and one requiring a great deal of study on the part of members of the Association if a fair bill is to be presented to the next Legislature. This resolution separates the subjects and appoints a specific committee to accomplish a specific purpose.

Mr. O'Neal:

Is it your idea to dispense with the formation of committees, or appoint separate committees to investigate these subjects?

Mr. W. C. Davis:

To appoint separate committees.

Mr. O'Neal:

I move to amend to appoint three committees, one on each of the separate subjects, to make report with the bill attached on each of those subjects.

Mr. W. C. Davis:

I desire to accept the amendment.

Mr. Cooper:

At the last session a committee was appointed, Mr. Davis was appointed and Col. John was the head, and I was a member of that committee, and Col. John very fortunately for me has done all the work. He has prepared a bill that has such excellent features in it that I cannot imagine how it can well be improved upon. I think well of having a committee, but I cannot sit here and permit such laborious effort, having such efficient features as has been framed by Col. John to pass by unnoticed. I have studied the subject with some little care, and have reached the conclusion that the bill prepared by that gentleman is a most excellent production. I am here to recommend it for the consideration of this Association, I think the Legislature would do well to consider the bill which he has prepared.

He has worked most laboriously, and I am sure that

there is not a man, a member of the Alabama Bar, who has the interest of the Association more at heart than my friend who sits on my right, or who devotes more energy or efficiency to it. I am going to take the liberty of asking the President of this Association, and I know Mr. Davis will pardon me, to suggest that he be named chairman of the committee.

The President:

Was that committee appointed for the very purpose that this committee is to be appointed?

Mr. Cooper:

Yes, sir.

Mr. C. P. Beddow:

If a committee has been appointed along these lines I do not see the necessity of appointing another committee.

Mr. John:

The committee appointed was composed of three, and Mr. Davis thought that it ought to be raised to five members.

Mr. C. P. Beddow:

Let the other three remain.

Mr. W. C. Davis:

It was joint work with the other committee, and I will say that this resolution was introduced really at the suggestion of Col. John, and I would be the last man in Alabama to consent for anything to be taken from Col. John, our friendship has been of many years standing; I think that he ought to be chairman of any committee raised on these questions.

The President:

You have heard the resolution offered by Mr. Davis and amended by Gov. O'Neal and the amendment accepted, that a committee of five be appointed by the President of the Association to prepare a bill to be submitted to the next meeting of this Association on the question of workman's compensation; the committee to consist of the three

members already appointed and two added by the President.

Resolution adopted.

Mr. W. C. Davis:

As I understood the amendment it provided also for a committee of five on land titles and one other—really three committees.

The President:

If that is the understanding of the Association that there will be three committees raised to cover the three subjects, I will not put that before the Association again, it will be understood that it covers the three divisions.

Mr. John:

I will ask the indulgence of the Association for a few minutes. Some member of the Association asked me last night why I was so silent yesterday when papers were read here? I said because I knew that I would have to read this paper and frame the report and get the matter out of the way. I thank Judge Clayton heartily for his remarks on yesterday in reference to that act amending a section of the Code in reference to the Supreme Court, and to the unfortunate amendment. I have sometimes thought I feel kindly to my fellow men, I have no malice in my make up, but sometimes I feel like having a big stick and hitting somebody when they offer an amendment, and I verily believe that if the Saviour were here and prayed somebody would jump up and offer an amendment. How that cursed amendment got on to that bill I don't know, it was not there when it received the approval of the joint committee. In the arrangement of that business it was agreed by the joint committee that we would have duplicate copies of every bill that we reported so it could be introduced into the House and Senate at the same time; the Senate being a smaller body, and not having anything like the number of bills introduced as in the House. All the bills bear a Senator's name, when the truth is, as Mr. Davis will tell you, that most of the bills

came from elsewhere and men are credited with the bills upon which they have never put pen to paper at all. Where this amendment came in I don't know. I want to read it to you, and if you can find a more assinine proposition I don't know it:

"That section 3227 of the Code be amended so as to read:

3227. All the rules now in force, which have been adopted by the Supreme Court, not contrary to the provisions of this Code, are recognized; and full, plenary power is granted to such court to adopt such other rules to regulate the practice and proceeding in all the courts of the State, or such modifications of existing rules as they may deem proper and to furnish forms of indictments, complaints, bills, pleas, and process and to mould the procedure in all courts and prescribe rules of evidence in the same, from time to time, as experience may determine that the existing rules do not fully meet the ends of public justic. Provided that the Supreme Court shall not have authority to change, alter or modify any act of the Legislature.

Now you can see if there can be in the English language stronger terms conferring upon the Supreme Court power to do what is essential in the courts judicial power I cannot conceive of it. When that bill was under consideration before the joint committee Senator Lusk asked me the difference between full and plenary power? I said I did not know of any, but some people would prefer one and some the other and if you use both it will not weaken it at all but show an intent to make it as broad as power could be conferred. I will ask you if that is not a wholesome provision, and accomplished what the Association has been wanting. I cannot see that the Legislature can

confer upon the Supreme Court to amend a statute or enact a new statute; whenever they go outside of the sphere of the court they are getting within the legislative sphere, and that is prohibited by the State Constitution. Unfortunately it stuck there, and it is construed differently by different people. I wish the gentleman who made that change was where we would never hear of him any more. Legislation is not an easy task. You cannot to save your life on any subject use language that will be construed by everybody the same way. I will give you an illustration that everybody will recognize, you will see how wide apart they have gone in the construction of one single statement. If you read Timothy you will see that it say, "the bishop shall be the husband of one wife." How has that been construed? The most of the civilized world say you shall not have two, three or more wives, and we know how the American construes it, but some construe it, he shall have at least one wife and as many more as he can take care of.

Look at the Supreme Court construing the time within which an act should be done which would be computed by discarding the first day and counting the last day, if the last day fell on Sunday it should be excluded. What was the result? Sunday should not be counted at all, you should act within nine days. The Legislature came along and put it in there that you cannot miss it, if the last day is Sunday it shall not be counted and the man shall have the following Monday to do the thing—they have not been able to get around that! I want you lawyers to think about those things, to take those two sections of the Code, in the old Code Sections 27, 28, 29, and then read what Judge Mayfield has said in print calling attention to the conflict in the two statutes, the construction the Supreme Court has put upon them, and you know it is a serious matter when a man has had a minor child killed wrongfully and he brings an action you do not want to be thrown out of court. So you see that so long as men are what they

are, so long as they will look at a question like the two men in Alabama, neighbors living on the Alabama River, and went down to Mobile. They got on in the night, did not know the other was on board. They happened to meet on the street in Mobile and one asked, when did you come down? Last night. What boat did you come on? On the Calliope. Why, I came on that, and it is the Calli-o-pe. They got disputing about it, and went down to the ship and one spelled it out on the wheel house, and asked if that is not Calli-o-pe—what is it? And some decisions and some distinctions are just as vital as that between Calliope and Calli-o-pe. Now the Legislature of Alabama has to work under more difficulties, more obstacles than any legislative body that meets on the face of the earth. How many committee rooms are prepared in the Capitol for committees of the Senate and House? Won't somebody tell me?

Mr. O'Neal: None.

Mr. John:.

Mr. O'Neal answers me none—and that is the fact!

Judge Clayton: I thought you had improvements made?

Mr. John:

We had two houses built, but the trouble of some people, like the man who ridiculed Mr. Ullman's paper yesterday, have no idea that the increase of population has increased the cost of government all along the line. Since that Constitution was made limiting the Legislature to 50 days we have more than doubled the population. At that time we had a dual session, met in the Fall and worked 25 days, and came back in February after Christmas recess, they had 25 days of every year for a little over a million population. What have they now? They have six and one-quarter days in every year for a million people. Is there any man knowing anything about modern society and the great advance in law and social conditions that will say six and a quarter days in a year is sufficient to legislate for a million people? This condition of affairs will re-

main until we have the moral courage to change that Constitution and take the shackles off the Legislature. Did you ever consider the fact that the Legislature is the only place where a citizen has a right to give expression to his views as to government. The Governor and executive departments merely execute the laws, the judges construe the laws as they are made and settle questions between man and man, but the Legislature is the only place for the expression of the voice of the people, and it is time that this great Association was waking up to that fact, to the fact that a great injury has been done to you and to your children by indiscriminate slander and abuse of the Legislature, when the men who were being abused were, so far as position and moral character was concerned, as far above the little men publishing the lies as Heaven is above Hell.

The President:

The next order of business is the Report of the Committee on Judicial Administration and Remedial Procedure by the Chairman, Hon. N. D. Denson.

Mr. Lewis:

I have a letter from Judge Denson, received several days ago, asking me to present the report of that committee. Not having had a meeting of the committee, and not knowing the wishes of the committee, I wrote to him and asked him to outline a report that he desired to be made. I have not heard further from Judge Denson, and therefore, I do not feel at liberty to make any report.

Mr. President, I have the temerity to suggest that the Supreme Court of Alabama should be requested to act under the authority vested in it by the last Legislature. It is true that unfortunately the amendment referred to by Judge Clayton and Col. John was adopted, but as I see it that does not paralyze the power of the Supreme Court under that act, and while we cannot get a full loaf we all know that progress is made slowly, and it strikes me that the Supreme Court under the authority vested by that act,

even with the amendment, has the power to regulate practice and procedure in Alabama to the extent that when a lawyer goes from his circuit into another circuit that he will at least find uniform rules of court procedure. As it is today you go out of your circuit and you have a rule made by another judge different from the rule promulgated by the judge of your particular circuit. That bill was enacted to do away with that trouble existing in this State, and the Supreme Court has the power, in my judgment, to at least go ahead and give us some of the benefits anticipated by the enactment of that statute. I submit that it is the duty of the court to go ahead and formulate such rules of practice and procedure as will give the Bar of Alabama some understanding of the rules of every court within the State. Those are my personal views. I have had no opportunity to discuss the matter with any member of that committee, but because we did not get all we wanted, because the amendment as Col. John says, can be construed one way or the other, I do not see any reason why we should be deprived of the benefit of that act to some extent, and I think this Association should on record requesting the Supreme Court to formulate rules of practice and procedure under the powers vested in it by that act. That is one thing that I felt called upon to state to the Association.

The President:

Did you offer that as a resolution?

Mr. Lewis:

It is a statement I am making on my responsibility.

Mr. John:

Put it in the form of a resolution.

Mr. Lewis:

RESOLVED by the Alabama State Bar Association that the Supreme Court of Alabama be, and is hereby earnestly requested, to formulate rules of practice and procedure uniform throughout the State of Alabama, under the power vested in it by an Act of the Legislature of 1915.

I offer that as a resolution.

Mr. John:

I second that resolution.

Judge Clayton:

I regret to have to antagonize that resolution. Of course, I am in full sympathy with the reform sought by the resolution and of the legislative proposition which is now under consideration. It is not a new subject to me, it is one that I studied long before the matter was advocated before this great Association. The American Bar Association has been advocating a similar measure for the reformation of procedure in the Federal courts in cases at law for years. There have been numerous hearings before the Judiciary Committee of both branches of Congress covering a period of years, and at the hearings before Congress the American Bar Association has repeatedly sent committees composed of such men as Judge Alton B. Parker, Hon. Elihu Root, Mr. Everett P. Wheeler, Mr. Thomas W. Shelton, and a number of other distinguished lawyers authorized by the American Bar Association to urge this reform.

Mr. President, I have a habit which if not altogether commendable is I trust pardonable, never to repeat in a public address without authority for repeating it, what is said to me in a private conversation. Now, if the honorable gentleman who has offered the resolution, and also those who favor it, will take the trouble to confer with the judges of the Supreme Court they will ascertain certain facts. They will doubtless learn that the Supreme Court Judges have had more than one conference and considered this very matter, the reformation sought under this legislative proposition, that they have considered it carefully and gone over it not off-hand as we are doing, not like the curbstone opinion of a lawyer that you can get for nothing. If you wanted a real opinion you would go to a lawyer and pay him a fee and have him give an opinion you could stand

on. Curbstone opinions get people into trouble. I don't mean any disrespect to the gentleman for offering the resolution by reference to curbstone opinion, but the gentleman himself says that it occurred to him, and doubtless it occurred to Mr. Johnston. I know it occurred to me. But if you take occasion I think you will ascertain that the matter has been under investigation and careful consideration by the Supreme Court Judges. They had this act before them, broad it is true in its language, comprehensive to add another adjective and yet with the statutes before them, the acts of the Legislature which you say the Supreme Court cannot repeal, and with that doctrine, that principle in their minds, and with all the statutes before them, and with this act, I think you will find that they had reached the conclusion that this act is unworkable. If the proviso in the act had been omitted it is clear to my mind that the statutes standing in the way of the reformation of procedural law in law cases would have been treated by the Supreme Court as not repealable by the Supreme Court itself but as having been authorized by the Legislature of Alabama to be disregarded by the Supreme Court, I think this idea fully justified by the doctrine of repeal by implication. Doubtless discussion of this subject will do good. But the wiser plan now is for this Association to "Stop, Look and Listen." Thus it will be ascertained why the Supreme Court has not, and very properly attempted to do anything under this act.

Now I do trust that Col. John will be a member of the next Legislature. If we were going to single out from the living men one man who has done more as a legislator in the general assembly, and later in the Legislature of Alabama, as our law making body is now called, than any other living man towards the enactment of wise laws for the advancement of our State and uplift of our people, I would name Col. John, and I think the nomination would not be challenged.

I do trust that he will go to the next Legislature. I

served with him once away back yonder in the early nineties and I can testify to his diligence, his capacity, his wisdom, his devotion to his duty. I hope that he will go there and pass this bill without that amendment in it, and then the Supreme Court will have a workable act and we will not have all these hitches in our procedure and consequent reversal of cases on points that do not reach the merits of the controversies.

Gentlemen, did any of you ever investigate the average State reports, to say nothing of federal cases, to see the number of points involved cases carried to the appellate courts. If you will do so, you will find in some of the State reports, I have not investigated the Alabama reports, and you will find in some of the Federal reports, that about 70% of the points reviewed in the appellate courts involved merely matters of procedure. Technicalities which do not go to the merits of the case ought to be avoided and can be avoided by simplified procedure. We lawyers mystify the layman when we tell him that his case was reversed because of something that did not affect the merits at all and he justly complains of the law's delay and expense and sometimes abuses the judges. The laymen understand substantive law, and they demand of the lawmaking body wise and proper substantive law. I repeat the Bar is derelict in its duty in the matter of procedure in that mere technicalities are given too much importance and are allowed sometimes not only to delay, but to defeat justice.

It is true that Congress has not passed a bill similar to this now under discussion, though urged to do so repeatedly by the American Bar Association, but that Congress will pass it, I have no doubt. However, the federal courts are doing what now? They are evolving a simplified system of federal procedure, they are doing it by the slow process of evolution.

When Col. John, Senator White, Governor O'Neal, Assistant Attorney General of the United States Fitts and

the rest of us young lawyers came to the Bar, the county courthouse was regarded as the great intellectual forum of that community during the term of the Circuit Court, and the people gathered there to hear the debates between the lawyers. There was the case of Smith vs. Brown, and they enjoyed hearing it tried. When the session was over they come out of the courthouse and it was familiar to hear said: "Wasn't that a fine speech Frank White made?" And the rejoinder would be: "Wasn't that a good argument Emmet O'Neal 'put up'?" "No, I think White got a little the best of him." "No, Emmet O'Neal got the best of it." And then there would be an animated discussion of the law and the evidence in the case. In this way popular intelligence and education was assisted long before the chautauqua platform lecturer was heard of. The vice of it was that the lawyers got to believing that the trial of a case was an intellectual contest between them, a measuring of skill as debaters, and of learning as lawyers. And they forgot that the reason lawyers, courthouses and judges was for the administration of justice.

I do not waste much time deploring things in the past, or lamenting about things in the present. A digression may be pardoned here for the purpose of saying that Mr. Ullman's excellent paper read on yesterday was too much on the order of the lamentations of Jeremiah. If you are going to tell a fellow that he is knock-kneed and cross-eyed, for mercy's sake tell him that he is six feet tall, square-shouldered and a fine specimen of manhood—say something else also true and at the same time good about him. Or, if you are ungallant enough to say to a lady that she has a wart on her nose, or is red-headed, do tell her that she has a winsome manner, pretty teeth and a kissable mouth. Let her understand that you do not believe her whole physiognomy is marred by a wart—that her face is not all warts. And then when we have spoken of the shortcomings of Alabama, let us also declare that un-

der God's shining sun there is not the like almost illimitable water-power, the same wealth in minerals, coal, iron and graphite; the like quantity of timber; the rolling prairies of blooming alfalfa and waving Johnson grass; as many pretty hills and fertile valleys of growing corn and cotton. What snow field in New England is as lovely as an Alabama cotton field in the fall when on the broad acres of sun kissed valleys and hills one can visualize the whiteness of God's blessing upon our beloved Southland. Yes, tell all this story notwithstanding the literature that has been produced, for campaign purposes, putting Alabama down near the foot in the list of illiteracy. Tell it that while we have many illiterates and a few fools in Alabama, that we have a great many ignorant negroes, that we have many people who are just now being given a chance; and also tell it that the educated men, and above all the educated women of Alabama, are so high in quality that they atone largely for the lack of education of the rest of our population. Also tell it, and also repeat it, that Alabama in her material wealth, in men and women, is the largest State, acreage considered, in all the Union. Sometimes I like to hear, and I am willing to follow the fellow into the low ground of sorrow, for a brief period, but for God's sake let him get up on the hill top sometime. I think that some of the things that a gentleman said here yesterday ought not to go out to the world with the approval of this Association. I think that some of the things said in his paper would hurt the State and I think it is unjust. Let us admit the warts and the tangled red hair (and by the way there is no hair prettier than the red for it is "saturated with golden sun beams,") to use the language of Victor Hugo, but oh, tell her of her grace and charm. Dear Alabama is not all hair, nor is her face all warts. Go to a beautiful placid lake with the lilies blooming on the edge and the trees swinging down their graceful boughs like a benediction of heaven. Mirror yourself in its bosom. Every star in the firmament

is reflected and the moon shines down so that on the still waters you see the diamonds borrowed from the skies and the mirrored splendor of the Southern moon. How beautiful is this lake! The reflections of the jewels of heaven—the trees, the lilies! While you are under the spell of the enchantment, declaiming of these blessings of the heavenly Father, you hear at your side some unpoetical individual exclaim: "Yes, that is all well enough; but there are about a half dozen darned old bull frogs over there on the edge of the lake making a hell of a fuss." Forget them or "Johnnie get your gun" and shoot them and have frog legs for breakfast next morning.

We people in Alabama have been too modest, and we have let ourselves and other people talk about it too much. If I were going to criticize the average good citizen of Alabama I would not say that he has treated the negro altogether too bad, there are some circumstances about that. Who started mistreatment of the negro in the South of which there was at least a veiled insinuation in the address made by one of the gentlemen who spoke here almost at the beginning of this session? Not we people, the native Alabamians, but the "hellians" the carpet-baggers of fifty years ago who came to our State to tyrannize over our people—I am not in politics and I can speak my sentiments!—like vultures to feed upon our substance, they put false notions into the negroes, and it has taken all these years to get those notions out of his head, to teach him that this government of ours was founded by men with white faces and straight hair not mongrels or blockheads, and that by the grace of God, and under His kindly providence the descendants of those founders are going to keep their hands on the helm and run the ship of state. They are not going to surrender our government and civilization to a race, however great the race may be. I pay just tribute to the negro for his good part done. We know that the old negro man and black mammy stood by us and took care of our homes

and took care of us in the dark days of the Sixties and they are good people and deserve good treatment, but there is a great deal of difference between treating them right and letting them govern. The negro race is an historic race and I think it is the only one of the historic races that has never floated a ship or built a city. Both of these things have been done by every other historic race that has contributed to the progress of the world. That race cannot float our ship of State, nor manage our affairs, either foreign or domestic. I do not find fault with the negro, but I want to say that in the practice of law for some years in a black belt county, the property rights of the white man and black involved, I have had very frequently a negro client in the controversy, and I want to say that I got a verdict in every such case that I ever tried in my life for the negro, and I got it from a jury composed of slave holders or their sons or grandsons. I recollect on one occasion an old negro said to me when I asked him about the jury: "Yes, I want a jury and all of them our sort of folks. I don't want no poor white trash to try my case."

Let me digress enough to say that so far as the property rights of the white man and the colored man of Alabama are concerned, that our people have a profound respect for law; but we must confess that when it comes to mere personal rights we rely too little upon the law. Every white man arises in the morning conscious of his ability to protect his person and his enjoyment of his personal liberty, to go where he pleases that day. Not always does he arise with the feeling that the law accords that as a matter of right. All this is very commendable. We got that notion from our ancestors who were pioneers. We ought now to realize more fully than we perhaps do that we do not live in a pioneer time and we should appreciate fully the maxim of Chief Justice Marshall in the Marbury Case, that we live under a government of laws and not under a government of men. That is the idea we should im-

press upon our people. One of the speakers brought that idea yesterday that ours is a government of laws and not of men. That is one of the greatest between democracy and autocracy.

I have digressed and you have been very patient, and I beg your pardon, and I offer an explanation in mitigation of my misconduct if you so construe it as you know: For some years it was my habit to go on the stump every now and then in State and National campaigns, and to get out what was in my system. I do not have that opportunity now, and I just thought that here is my chance, I have the most intelligent audience that I have faced in many a day, and I hope a patient and forgiving one. Therefore I have spoken. I thank you for your attention. Finally, I repeat the suggestion, that we go slow about adopting the proposed resolution. If the Supreme Court can do it it is rather a reflection on them. You might paraphrase that or put in these words: Whereas the legislature of Alabama passed an act in 1915, and whereas the Supreme Court has had time to do this work; and whereas the Supreme Court has not done this work, therefore, be it resolved by this Association that the Supreme Court is derelict in their duty in that regard. I do not think that that is right.

Mr. Lewis:

I rise to a question of personal privilege. I do not think that the distinguished gentlemen exactly understood the language in which that resolution was couched if he considers that I, in any way, intended to reflect upon the Supreme Court of Alabama. But I realize, Mr. President, that the Supreme Court is but the servant of the people, and I know of no servant of the people that is not subject to criticism, if you call it such. I do not wish to prolong this discussion, but I deem that I should make these remarks in justice to myself. Far be it from me, Mr. President, to attempt to answer the splendid argument of the gentleman who so ably presides over one of

the Federal Courts in this State, but permit me to say this, Mr. President and gentlemen of this Association, it appears to me that that is merely a request to the Supreme Court if they find in their wisdom, after consultation, that they cannot give us relief, if they will so report, it will stimulate the next Legislature to give them the full benefit of a proper act. I thank you, Mr. President.

Mr. O'Neal:

Is the subject open for debate?

The President:

We have no further time to devote to that question at present. The further proceedings of this session will be continued at Bay View after luncheon; the program will be carried forward as much as possible to that time.

The Association then adjourned to go on the excursion tendered by the Tennessee Coal, Iron & Railroad Company, to the Steel Plant of Ensley and other manufacturing plants.

NIGHT SESSION.

The meeting was called to order at 8:30 P. M. by the President.

Mr. Cooper:

I move you, sir, that a committee of five members be appointed to nominate officers, other than President of the Association, to serve for the ensuing year, to report at the morning session tomorrow.

Motion adopted.

The President:

I appoint the following committee on nominations of officers other than that of President: Lawrence Cooper, J. A. Carnley, J. H. Peach, R. C. Hunt, Felix L. Smith. You, gentlemen, will be expected to report at the meeting tomorrow at the Country Club where we meet for the morning session.

I would like to say a word at this time about our entertainment today. I think I not only express my own views, but the opinion of the members of the Association, that the days' entertainment was charming in every respect. I think the local committee on arrangements here have done their work beautifully. Personally I want to thank them for it on behalf of the Association, and also thank the Tennessee Coal, Iron and Railway Company.

Mr. Sims:

I move that the Association express, in writing, through the Secretary, its thanks to the Tennessee Coal, Iron and Railroad Company, and to Mr. Crawford, its President, for the time given in stopping the mills, and the time given us on the tour of inspection of its territory today.

The President:

You have heard the motion of Mr. Sims, and I think our thanks might be expressed a little more formally, and I will ask the members of the Association to rise in voting for it.

Motion adopted unanimously by rising vote.

The President:

The next feature on the program of business for this evening will be a Paper by Hon. Emmet O'Neal on "The State Constitution."

Gov. O'Neal then read his paper.

THE STATE CONSTITUTION

Thoughtful students of our institutions have declared that one of the most popular but ill founded American illusions is that their State Governments have been successful. Americans they assert are inclined to believe that these governments have on the whole served them well, whereas in truth they have been ill served in their machinery of local administration and government.

The weakness and inefficiency of our State governments

have been largely obscured by the vigor and energy of the central government, but this weakness while partially concealed, has not been redeemed by the efficiency of the Federal Government.

That the State Governments have failed to exercise in an efficient manner many of the primary functions of government cannot be denied and while we may differ as to the causes that have produced this failure, we must all agree that this failure if permitted to continue, may compromise the success of the American Democratic experiment. A recent writer declared that the cause and cure of this failure constituted one of the most fundamental of American political problems.

The indictment against the State Governments charge in effect, that in their financial and economic legislation the States usually have shown incompetence and frequently dishonesty, that in their relations to corporations they have been as ready to confiscate private property as they have been to confer on it excessive privileges, that their educational systems, while well intentioned, have neither been intelligent or adapted to the needs of an industrial and agricultural democracy, that their taxing systems are chaotic, based on the old property tax, which under modern conditions is both unjust and unproductive, that while the Federal Government has done much, the States have done little to ameliorate the condition of the American people, and that the lawlessness and disorder, which reflects on our civilization, can be traced to our dilatory and antiquated judicial methods and the inefficiency of the State Governments in the enforcement of the criminal laws.

That many of the charges contained in this indictment are well founded, all impartial students of our State Governments must reluctantly admit. Our State Governments should represent the best cotemporary ideals and methods but in truth they too often reflect a standard of popular behavior decidedly below the average.

We can only judge other States by our own and we

know that in Alabama reforms have been accomplished only after continued but painfully slow efforts, checkmated too often by selfish special interests—that there is a profound distrust of our Legislature, a distrust justified by the record they have made in recent years, that our taxing system is chaotic, both unjust and unproductive, frequently based on false and vicious principles, lacking both in equality and uniformity, that notwithstanding the marvelous resources of the state, and our increasing wealth, industrial and agricultural development, our state treasury constantly faces a deficit and that contributing more from the general treasury for the support of our common and high schools than any State in the Union, we still rank near the bottom of the list in the scale of illiteracy.

In the larger cities of the state we have abandoned the old aldermanic system and substituted the commission form of government, and yet there is dissatisfaction and a general agreement that radical changes are necessary before we can hope to secure an efficient and economical system of municipal government.

Although we have made commendable progress, we are still hampered in the enforcement of our criminal laws by an antiquated and illogical judicial method, and mob violence and lawlessness frequently bring reproach upon our state.

Our larger cities are burdened with debt and their incomes are wholly insufficient to justify expenditures necessary to their growth and progress.

In the administrative departments of the state, county and municipal governments, there is waste, lack of efficiency and economy, due largely to our failure to adopt improved, modern and scientific business methods and practices. The states, counties and municipalities, collect and disburse millions of dollars and yet follow business methods and practices which would speedily wreck any private business corporation—methods and practice condemned by the experience and habits of the business

world. Yet similar conditions prevail practically in every State in the Union.

To illustrate the truth of these assertions, it may be well to recall one or two flagrant instances of business inefficiency prominent in the state's history.

The United States Government in its munificence, granted to the state upon its admission to the Union, a princely estate for our elementary schools, every section of the public lands numbered 16 in every township. How did we manage this sacred trust or conserve the splendid endowment of virgin lands, rich in minerals, in timber and in agricultural possibilities? Did we conserve the corpus of the estate, gradually dispose of the timber according to approved forestry methods, so as to secure an annual and increasing valuable timber crop, did we lease the minerals on royalty or rent the agricultural lands, as would have been done by any careful and intelligent trustee? No; we signally failed to faithfully execute this great trust. The rich heritage of the children of Alabama, we dissipated with criminal recklessness. The state failed to provide agents to protect the lands against trespassers and squatters, with the result that the most valuable timber was stolen and squatters occupied and secured title by adverse possession to thousands of acres. It is true that the statute of limitations or adverse possession could not be invoked against the state without its consent, but a weak and vacillating Legislature, yielding to the importunities of those who had by squatting and unlawful methods acquired possession of these lands, struck down this safeguard, by barring the suit of the state after the lapse of twenty years. The records of the sales that were made, were improperly kept and notes due for land were allowed to run until many of the parties were dead or the claim barred or the records of the transaction mislaid or lost. The state's administration of this royal domain, entrusted to its management, as trustee for its children, was but a record of waste, lack of sound bus-

iness methods and criminal negligence. Had this great heritage of the children of Alabama been properly conserved and administered, Alabama would not now be facing a deficit in its state treasury, but our elementary and high schools would be enjoying a princely income, which would have made our elementary schools among the most advanced, progressive and prosperous in the Union. To-day out of every sixty-five cents of taxes collected on property, our state constitution appropriates thirty cents for the common schools, which although amounting to millions, does not replace the income dissipated by our mismanagement of the Sixteenth Section Fund.

But the mismanagement of the Sixteenth Section Fund is but one of the many instances of the truth of the assertion that our state government has failed in its administrative functions.

The state possessed until recently another asset of incalculable value, in its enormous water power. Under the law, the state had an easement or title to the waters and bed of every navigable stream in its borders, and capable of developing one million and eighty-four thousand horse power. It was only in recent years that the energy which can be developed from falling water in our rivers and streams assumed vast commercial value. Fifteen or twenty years ago, hydro-electric power could only be transmitted about ten miles, but today the distance to which it can be carried is hundreds of miles. It can furnish power at less cost than can be provided in any other way, on account of its greater cheapness and the facility with which it can be transmitted almost any distance. It will eventually largely supersede steam, because no manufacturing plant using steam can compete with an establishment using hydro-electric power. Yet in 1907, the state made a gift of this valuable asset to any corporation acquiring a dam-site or power-site of not less than one acre upon each and opposite sides of any water course, and without exacting one cent of royalty or toll on the

power developed. Not only did it donate this valuable asset to private corporations, but exempted all improvements erected in the development of the hydro-electric power from taxation, and moreover passed laws which left the consumer of power unprotected, and at the mercy of the hydro-electric corporation. When it is remembered that water power, when developed, has to do with commodities of every day life, heat, light and power, every industrial and manufacturing enterprise is affected, and hence the public interests should be fully protected.

I mention these matters from no spirit of controversy, but merely as flagrant instances in which the state has failed to properly discharge the most important duties of efficient government.

It may be that these failures of the state government are irremediable, unless we can secure an aroused public interest and a deeper sense of civic duty among the people.

Flagrant failure of a state of government to properly and efficiently perform necessary duties of administration may be often due to public apathy and indifference, or a low standard of public and private morality. In the case of Alabama, however, the failure, in my judgment, is chiefly the result of unwise organization. The state constitution which creates, determines the character of the state government. The fundamental defect in the present state government of Alabama is due to the many unwise, and unnecessary restrictions, limitations and inhibitions found in the state constitution, by reason of which the different departments of the state government are hampered or weakened in the exercise of necessary and essential governmental powers. Many of the provisions of the constitution stand as insuperable barriers to most of the important reforms necessary to meet modern conditions, and either prevent or weaken all efforts to secure greater economy, efficiency and vigor in the administration of the different departments of the state government.

It may be laid down as a fundamental proposition that

any analysis of the causes that have contributed to the partial failure of our state governments can be imputed to the lack of a centralized and responsible organization; but, as has been truly said, whenever an attempt is made to establish a system of state government which does concentrate responsibility, serious difficulties are met. There are but two ways in which this concentration of responsibility can be brought about, either by subordinating the legislature to the executive, or the executive to the legislature.

CONSTITUTION OF 1819.

An examination of the first constitution adopted in Alabama, the constitution of 1819, shows that this concentration of responsibility was sought to be brought about by subrogating the executive to the legislature. The legislature was composed of a senate and house of representatives, the members of the house being elected annually and their terms of office fixed at one year. The senators were elected for three years, and divided by lot into three classes, the first class to hold office for one year, the second class two years, and the third class three years, so that one-third were annually chosen and the rotation kept up perpetually.

There was no limitation on the length of the session of the legislature. The legislature elected the secretary of state, the state treasurer, and comptroller of public accounts, now the auditor, chancellors, judge of the supreme court, circuit and inferior courts, the attorney general and the circuit solicitors. The Governor could only fill vacancies during the recess of the legislature, the commission to expire at the end of the next session. There was practically no limitation on legislative power except those which might be found in the bill of rights and the Federal constitution. The legislature created by the constitution of 1819 had more power than any legislature ever

convened in the state, all the power of the British Parliament, except the few limitations found in the bill of rights and the Federal constitution.

The Governor, although the chief executive officer of the state, was denied all power of appointment except to fill vacancies during the recess of the legislature. All the important officers in the state were appointed by the legislature. This subordination of the executive to the legislature was in accordance with the early American traditions. Our ancestors believed that the chief danger of democratic government was executive usurpation, and that hence by curbing the powers of the executive and transferring his most important functions to the legislature, they were convinced they were vesting power in a body more responsive to public opinion and therefore safer depositories of power, and that by such action they removed all fear of that executive tyranny and arbitrary conduct which had brought about the Revolution.

THE DEMOCRATIC MOVEMENT.

In 1831, coincident with the rise to power of Andrew Jackson, and the adoption of his views by the Democratic Party, there was a general movement, embracing the entire country, to increase the power of the people and entrust them with more control over elections, and this tendency of the times found expression in Alabama in an amendment to the constitution, by which circuit and inferior judges were made elective by popular vote instead of by appointment by the legislature. In all subsequent constitutions, the power of appointment was gradually withdrawn from the legislature and vested in the Governor and limitations on legislative power embodied in the constitution, manifesting a growing distrust of legislative power.

After the close of the civil war, the constitution of 1868, which was framed by a convention from whose member-

ship all who had proved loyal to the Confederate States Government were practically excluded, was submitted and rejected by the people at the polls, but forced upon the state by congressional action.

CONSTITUTION OF 1875.

When the Democratic Party regained control of the state in 1874, among its first acts was to call a new constitutional convention. The bonded debt of the state had been enormously increased by the legislatures of the reconstruction era, new and unnecessary offices created, fraudulent bonds issued, the treasury looted and a most onerous system of taxation imposed on the people. Hence the primary purpose of the convention which met in 1875 was to reduce expenses, to place stringent constitutional restrictions on legislative power and to prevent a recurrence of that saturnalia of misgovernment and extravagance, which during the reconstruction era had brought the state to the verge of bankruptcy and governmental chaos. The framers of the constitution of 1875, having fresh in their minds the waste and extravagance of the legislatures of the reconstruction period, were distrustful of legislative power, and the result was that for the first time in the history of the state the powers of the legislative department of the state were radically curtailed by numerous constitutional restrictions and inhibitions on legislative competency. The constitution of 1875 placed no restrictions on negro suffrage. The Federal government was under the complete control of the Republican Party, which was bitterly hostile to the South. The fear of Federal interference, therefore, prevented any effort on the part of the framers of the constitution of 1875 from undertaking to restrict negro suffrage or lessen its admitted evils.

The negro vote constituted an overwhelming majority in that portion of the state known as the black belt, and it

was sufficiently large in many other portions of the state, in combination with the white republicans, to constantly threaten white supremacy, which was the chief tenet of the Democratic Party. The fear of negro rule, with the misgovernment which would follow, and the race conflicts which it would create, constantly threatened the state and checked its progress. White supremacy was maintained by methods which could only find their justification in the imperious necessity of self-defense and self-protection. Negro rule meant that the white man must surrender his home and lands or remain under conditions which were intolerable. The white race had settled Alabama and owned its lands and hence was determined not to surrender to an alien and inferior race, which had been brought to Alabama as slaves and which had acquired the right of suffrage only by grant from the victorious North, and as one of the results of the war.

CONSTITUTION OF 1901.

Towards the close of the last century, as the sectional passions engendered by the Civil War had abated, and the danger of Federal interference had passed, the people of Alabama determined to reform the suffrage and make secure by the fundamental law white supremacy and remove forever the dark menace of negro rule. The reform of the suffrage and the elimination of the ignorant, purchasable and unfit negro vote was the paramount issue in the campaign for the calling of a constitutional convention in 1900, and hence when the constitutional convention of 1901 assembled, the suffrage question overshadowed all other issues. This was conclusively shown by the fact that the constitution of 1875, which had been framed primarily to prevent the recurrence of conditions created by reconstruction, was practically readopted.

Restrictions imposed on legislative action by the constitution of 1875 were further increased. The distrust of

the legislature, so clearly manifested by the framers of the constitution of 1875, instead of abating, seems to have grown in strength and found its chief expression in the substitution of the quadrennial for the biennial session, and in further limitations of legislative power and competency.

The constitutional convention of 1901, addressed itself with vigor and intelligence to the solution of the suffrage question and the article on the suffrage secured a permanent reform, which withstood all attacks in the courts and which stands as a monument to the ability and statesmanship of its members. Aside from the reform of the suffrage and the correction of the evils of local legislation and the power of the Governor to amend bills. there were few, if any, provisions of the constitution of 1901 which can be regarded as an improvement on the former state constitutions. The readoption practically of the constitution of 1875 was a fundamental mistake and the numerous restrictions and limitations imposed on the powers of the state government, were both unwise and unnecessary and tended to hamper vigorous and efficient administration.

PRINCIPAL WEAKNESS OF PRESENT CONSTITUTION.

The principal weakness of the present constitution is its failure to concentrate responsibility and authority. It manifested a profound distrust both of the executive and the legislature and as the result of this distrust, weakened the powers and efficiency of both the most important departments of the state government.

The author of "The Promise of American Life" summed up the whole argument in these terse sentences, "There can be no efficiency without responsibility. There can be no responsibility without authority. The authority and responsibility residing ultimately in the people must be delegated; and it must not be emasculated in the process

of delegation." I shall now proceed to invite your attention briefly to some provisions of the present constitution which seems to me to require revision or repeal.

BILL OF RIGHTS AND ENFORCEMENT OF LAW.

A government which does not secure a speedy and impartial administration of justice has failed in its chief purpose. Does the Alabama constitution stand in the way of the enforcement of our criminal laws? The bill of rights guarantees to every citizen trial by jury in the county or district in which the offense was committed. While this provision is found in Magna Carta, it is nevertheless an obstacle in many instances to the enforcement of our criminal laws. It is generally recognized that the criminal laws are more impartially and vigorously enforced in the State of Virginia than in probably any southern state. Under the law of Virginia, upon the order of the trial judge, the jury can be brought from any part of the state on the trial of a felony. We all recall the outrageous defiance of the law in Virginia, when certain lawless men who were on trial, with the aid of their friends and adherents "shot up the court," taking the life of the judge, solicitor or prosecuting officer, and clerk, seriously wounding others and shocking the whole country by the most flagrant defiance of law that ever stained our criminal annals. The men who committed this crime were men of influence and wealth in their communities and if they had been tried by a jury selected from among their friends and associates as required by the laws of Alabama, outraged justice would not have been vindicated. An impartial jury was selected from another part of the state, free from local influence and passion and justice was vindicated and the guilty punished. If Alabama is to put an end to lynch law and punish the lynchers, the legislature should have the power to authorize the trial judge to exercise the same power as can be exercised in Virginia by summoning a

jury from any part of the circuit or state. The present bill of rights is a bar to this necessary reform in the administration of our criminal laws. All state officials guilty of embezzlement of the state's money should be triable in the county of Montgomery. My own experience convinced me that it was useless to expect the conviction of a popular official charged with embezzlement, however positive the proof of guilt, if he was triable in his home county.

VENUE.

All the authorities on law reform unite in the opinion that the state should be entitled as a matter of right to a change of venue, where such a change is demanded in the interest of public justice. The bill of rights, however, provides only for a change of venue at the instance of the defendant. Blackstone says to summon a "jury laboring under local prejudices, is laying a snare for their consciences." We would take a decided step in the enforcement of our criminal laws, if a change of venue could be accorded both to the state and to the defendant as a matter of right upon proper application.

EXECUTIVE DEPARTMENT.

Under the provisions of the constitution, although the Governor and the legislature are elected for the same terms, the legislature convenes about one week before the Governor is inaugurated. Section 123 of the constitution requires the Governor at the commencement of each session and at the close of his term of office to give to the legislature by written message the condition of the state. He shall also "from time to time give the legislature information of the state of the government and recommend for its consideration such measures as he may deem expedient." The practical effect of these provisions, is to

require both the incoming and retiring Governors to each deliver to the same legislature, within a period of less than a week, written messages. The confusion which results is evident and the useful purposes to be subserved is difficult to understand.

The retiring Governor is required to submit a message, and he accordingly recommends such legislation as his four years of actual experience in the administration of the affairs of state suggest, and yet within a week after his message is delivered, he retires from office and is denied any opportunity to properly use the influence and prestige of his position to secure the reforms in legislation he may advocate. A few days after his closing message, the incoming Governor delivers his inaugural address and message to the same legislature. The policies of the incoming and retiring Governor may be utterly antagonistic, and yet upon each is imposed the duty of recommending to the legislature such legislation as each may deem expedient. The legislature may therefore have within the period of one week, two sets of recommendations as to state policies and legislation, which may be utterly antagonistic and contradictory. Whose guidance will they follow?

It would seem that the incoming Governor, elected at the same time with the legislature, and representing policies which the people by his election have approved, would have the controlling voice and influence. The retiring Governor is nevertheless required to deliver a message which he knows will fall on ears either deaf or indifferent, and yet this farcical performance is demanded by the constitution.

The Governor-elect is required in his initial message to give the legislature information of the state of the government, although he is without legal power when his message is prepared to demand from the different departments sworn reports and detailed information as to the needs of the respective departments or the condition of the

state government. Ushered into office with the legislature in session, before he has acquired that practical knowledge of the actual workings of the state government which can alone come from experience, he is expected to at once submit to the law-making body all the reforms in legislation which can occur during his administration. By the time he has acquired actual knowledge of conditions and learned what reforms are needed, there is no legislature to whom he can make recommendations, except the legislature elected and commissioned just on the eve of his retirement. Inducted into office during the turmoil of a legislative session, besieged by hosts of applicants for office and pardons overflowing his anteroom and demanding all his time, the incoming Governor is nevertheless required by the constitutional mandate to know in advance of actual experience, the condition of the state and to submit for his entire term his completed program of legislation. In no other state of the Union can a constitution be found imposing upon the incoming Governor duties so contradictory, confusing and senseless.

The legislature should be assembled only after the incoming Governor has had some months of experience in office, some opportunity to give careful study to the wants of the state and sufficient time to prepare such legislation as he may ascertain is required for a wise, economical and efficient administration. The people look to the Governor elected by the votes of the entire state and not to the legislature for leadership and yet with the handicap of the present constitution, a Governor, however wise and popular, is denied the opportunity of having policies he represents, policies which the people have endorsed by his election, translated into legislation.

During his four years term a Governor comes into contact with many unwise laws and learns by actual experience defects in the machinery of government, yet all this valuable information and experience goes for naught, for there is no legislature to whom he can appeal until his

term is practically closed, his influence either gone or waning and public attention directed to "the rising instead of the setting sun." All students of state governments agree that the most valuable reform legislation comes from the Governor's mansion instead of from legislative halls. Under the unwise provisions of the constitution, the Governor is merely an executive agent, stripped of his powers of leadership, denied the opportunity of giving to the people the benefit of his experience or making any impress on the policies of the state or leading to fruition any movement for legislative reform.

The constitution enlarges the terms of the Governor from two to four years and makes him ineligible to succeed himself. The framers of the constitution seemed to have been impressed with the conviction that the Governor by reason of his great position, his influence and patronage, could establish so strong a following as to assure his re-election. Yet the fallacy of this reasoning is manifest when we remember that patronage, the power of appointment, is a source of weakness instead of strength. A Governor is popular when he enters office, a popularity based on a lively sense of favors to come, but every time he makes an appointment, he makes one indifferent friend and many active enemies and by the time he retires from office he has accumulated a very large and disagreeable assortment of hate and open hostility.

No very sound reason then exists for this restriction. The constitution should not deny to the people the right of availing themselves even for eight years of the services of a Governor, who by reason of his experience would naturally be more efficient during his second than his first term.

The constitution also provides that the Governor shall not be eligible for the office of United States Senator until after the expiration of one year from the close of his term of office. The United States Senate is the sole judge of the qualifications of its own members and this provision

could not bind the Senate of the United States. The reasons why this singular provision was incorporated into the constitution was an open secret among its framers, and it is sufficient to say that it was not suggested by any desire to subserve the public good, but was inspired by certain gentlemen with senatorial aspirations whose ambitions might be defeated by a certain popular Governor. It is one of the anomalies of fate that the gentleman against whom this provision was levelled, at the next term was elected by popular vote to the senate and that those who expected to profit by his disqualification never realized their ambition.

By Section 158 of the constitution, the Governor's power of appointment was limited. The appointees, if justices of the supreme court or judges who hold office by election or chancellors, could only hold office until the next general election, if held at least six months after the vacancy occurred. Why should such appointees not hold office for the unexpired term as provided in the constitution of 1875? Some of the most distinguished names on the rolls of our judiciary owed their entry into public life to appointment by the Governor. Certainly since the introduction of the primary system, the standard of executive appointments have been of a higher character than that established by elections by the people.

REORGANIZATION OF EXECUTIVE DEPARTMENT.

How should the executive department be recognized so as to increase its efficiency and capacity to best promote the public interest? We should adopt the policy of concentrating power and responsibility in the chief executive. He should be elected for a term of four years as at present and the restriction as to his eligibility to succeed himself removed. The veto power should be made more effective by requiring a two-thirds vote to overcome the Governor's negative. He should be given the power to appoint all

his executive agents, as the president appoints his cabinet and all Federal officials. All the heads of the different executive departments, the attorney general, the auditor, secretary of state and treasurer, superintendent of education and commissioner of agriculture, should be appointed by the Governor and should constitute his executive council.

Charged with the duty of seeing to it that the laws are faithfully executed, he should have the power to remove from office any sheriff who from cowardice, gross negligence or incompetency, permits any prisoner in his custody to be put to death by mob violence, or by any flagrant neglect of duty fails to enforce the laws.

He should have the power to suspend any tax collector for failure to perform his duty and to make such suspension permanent for good cause, after a hearing.

All vacancies in office should be filled by the appointment of the Governor for the entire unexpired term. He should have the power of removing any administrative official in the employ of the state and appointing his successor.

Under the present constitution the Governor is part of the law-making power and can recommend to the legislature for its consideration such measures as he may deem expedient. Eminent authority has held that these recommendations can take the form of a bill, if the Governor should so elect. In revising our constitution, it would be well to define this power more clearly, to authorize the Governor, if he saw proper, to present his recommendations in the form of bills, and to give these bills precedence in the consideration of the legislature. It might be well to allow the Governor to be represented in the legislature either in person or by some official whom he might designate, with full power to submit and discuss the measures presented, but without the power to vote.

GOVERNOR'S AMENDMENT.

The present provision in the constitution which allows the Governor the power to amend any bill submitted for his approval, should be retained. This amendment is in the nature of a veto. It is not found in the constitution of any other state and is one of the novel features of the constitution of 1901, the value and wisdom of which cannot be denied. It vests in the Governor a most important and far-reaching power. It makes the Governor in a sense more directly responsible for every bill enacted by the legislature. With sufficient time for consideration and investigation, there is no reason why vicious or bad laws should be enacted, if their defects can be corrected by the Governor's amendment. If a bad law is passed, the Governor is generally held responsible at the bar of public opinion, and hence he should be armed with this power of amendment by the provisions of the constitution and his amendment should not be overcome by less than a two-thirds vote, instead of a majority of the members elect, as now provided.

This increase of the power of the executive would tend to better legislation and make him directly responsible to the people for the laws enacted during his administration. As President Wilson declared, the people look to the Governor and not to the individual members of the legislature for leadership, and for the passage of such laws as the economic, political or social condition of the state may require and judge his administration by his success or failure in securing the enactment of necessary laws.

The constitution charges the Governor with the duty of seeing to it that the laws are faithfully executed. He should therefore be vested with the power to appoint such subordinate executive agents as may be necessary to maintain order and secure a proper enforcement of the law. It has been suggested that the power of the Governor to enforce the laws of the state would be very materially in-

creased, if he was vested with authority to employ a well disciplined and well trained state constabulary, which could be quickly concentrated and which would be independent of merely local opinion. Such a force should be composed of a small body of men, subject to the orders of the Governor, with full authority to investigate crimes or infractions of the law in any part of the state, with power to make arrests, vested fully with all the powers that the sheriffs of particular counties might possess. This small body of constabulary would become experts in the detection of crime and the small expense attached would be more than compensated by the more vigorous prosecutions of crime and enforcement of the criminal laws of the state. Such a body of men, selected on account of their qualifications, would be far more valuable than the private detectives upon whom we are now so often forced to rely to aid in ferreting out crime and bringing the guilty to justice. My own experience convinced me that the public largely overestimate the value of the services of private detectives, and I am of opinion that officials known as the state constabulary, or state sheriffs, vested with all the power and authority of the law, under the control of the Governor, would be a most effective and valuable agency in securing better enforcement of our criminal laws.

Lynchings, which are generally the product of excited local feeling, will never be stopped by the sheriffs, who are most generally influenced and controlled by local public opinion. It is true that the power the Governor now has to order the impeachments of sheriffs who fail properly to protect prisoners in their custody from mob violence, if exercised with vigilance and firmness, will tend to better enforcement of the law, but even the fear of impeachment will not always prevent sheriffs from yielding to the influence of the mob.

This body of state constabulary would largely dispense with the necessity of a state militia, which is generally

badly disciplined and slow to arrive at the point of trouble. The thousands of dollars expended by the state annually for its state troops would be more advantageously spent for a body of state constabulary, well mounted, well trained, experts in the detection of crime, under orders of the Governor, with all the powers of sheriffs to make arrests and to maintain order and enforce the laws in any part of the state. Alabama appropriates thousands of dollars for the support and maintenance of her state troops, a sum as large, if not larger, than the Dominion of Canada expends for her mounted constabulary, which maintains order and polices a territory larger in area than the United States.

The executive department, reorganized on the lines suggested, would make the Governor in truth as well as in name the chief executive officer of the state, clothed with sufficient power to guarantee an efficient and responsible administration.

This program will be criticised by those who oppose all reform of the executive department from the fear of executive usurpation or tyranny. They would deprive the Governor of the power to do much good for fear that he might do much harm. This is the policy which has been pursued both as to the executive and legislative departments, and this denial of power and responsibility has resulted in lessening the efficiency and usefulness of both. It is the primary cause of the weakness of the state governments and all the trend of modern thought on the subject is that there is but one remedy for that weakness, and that remedy is a very decided increase of power and responsibility in both departments. Both departments should be reorganized on the principle that they should have full power to do either well or ill. If they do ill, the power of punishment, swift and severe, still remains in the hands of the people.

We are accustomed to boast of the efficiency and vigor of the Federal government, and yet the President has the

power to appoint not only the members of his cabinet, but all other subordinate executive agents, the marshals, collectors of revenue, postmasters and even the judiciary. If the Governor of a state possessed similar power and responsibility, he would appoint not only all the heads of the various state departments, but all the sheriffs, tax collectors and judiciary of the state. With all the vast powers bestowed on the President of the United States and his effective control over legislation, there has never been any abuse of power or fear on the part of the people of executive usurpation or tyranny.

If the President of the United States possessed no more power over the departments of the Federal government than the Governor of Alabama can exercise over the departments of the state, if he was denied the authority to appoint all his subordinate executive agents, or to have behind him in the enforcement of law all the power of the government, who can doubt that the Federal government would not have lasted a single generation. It would have speedily fallen from its own innate weakness.

If therefore we desire an efficient and vigorous government in Alabama, we must clothe both the Governor and the legislature with all those powers which experience has shown to be essential for a successful and vigorous administration.

Under the present system it is only the merest chance that there is any harmony or unity of action between the Governor and the different departments of the state government. The attorney general, the secretary of state, the state auditor, the state treasurer, superintendent of education and the other heads of departments are but necessary parts of the administrative and executive machinery of the state government and the successful administration of any Governor is dependent upon their loyal co-operation, unity of action and effort, and yet all or most of these important officials may be openly hostile to the Governor, opposed to his policies and earnestly seeking to weaken or

defeat his administration. Yet while the Governor is alone held responsible at the bar of public opinion for the success or failure of the state administration, he is denied the right to appoint officials whose active co-operation and loyalty are so essential to the success of his administration.

With all these increased powers, it may be claimed that the election of a demagogue or some unworthy and disloyal man might do great harm to the state. This fear is based on the assumption that the people of a self-governing democracy would be unable to discriminate between some competent and worthy man and some self-seeking charlatan—an assumption which can not be admitted by those who have faith in popular government. If the people be as lacking in powers of discrimination as feared, the harm that the demagogue might do would prove a salutary and valuable political lesson. It would be but a small price to pay for efficient and responsible government.

With such an increase in executive power, the Governor could properly be held responsible for the character of the administration and he could not escape this responsibility by attempts to shift the burden on others. He could translate his policies into laws, yet he could do but little without the support of public opinion. It is to public opinion he would be forced to appeal against a reactionary legislature or one that in his opinion had betrayed the interests of the people or declined to enact legislation to which he was pledged by his election. His leadership would depend on his capacity to influence and secure the support of public opinion.

With the increase of power and responsibility, there would certainly be greater opportunity for service, for the display of administrative and executive ability than ever before in the history of the office.

LEGISLATIVE DEPARTMENT.

The constitutional convention of 1901, embarked the state upon a new and untried experiment, that of quadrennial sessions of the legislature, limited to fifty days. From the date of its admission to the Union until the adoption of the constitution of 1875, the legislature of Alabama had met annually. There were but few restrictions upon the competency of the legislative department or its methods of procedure in the enactment of laws. Commencing, however, with the constitution of 1875, numerous limitations on legislative power, prohibition of certain kinds of legislation and minute restrictions and regulations as to methods of procedure in the passage of laws were incorporated in the fundamental law. This distrust of the legislative department was further evidenced by the establishment of biennial sessions limited to sixty legislative days. Not only was the quadrennial system adopted by the constitution of 1901, but the field of legislative action was narrowed by increased restrictions upon methods of procedure in the enactment of laws and prohibition of local legislation on certain designated subjects and prohibition of legislation on certain general subjects.

I think we all agree that instead of preventing hasty, ill digested or ill advised legislation, the quadrennial system has only increased the evils sought to be abated. The vice of the system is that it denies to the people for four years the right to repeal or revise vicious legislation. It is true that under the constitution the Governor can call the legislature in special session on extraordinary occasions, but these sessions are limited to thirty days and can only consider the subjects embraced in the call. If the legislature at its quadrennial session failed or refused to enact legislatures many vacancies will occur in the legislative body—be a new legislature, fresh from the body of the people, ready and willing to execute their well considered judgment. Under our system, the members of the legislature

serve for four years and if at a regular session, vicious or unwise laws are enacted or necessary reforms refused, it is rather a forlorn hope to expect that the authors of such legislation, or those who have opposed remedial measures, will be swift to undo their own work.

SPECIAL SESSIONS.

If it is claimed that the power of the Governor to call special sessions obviates the objection to the quadrennial system, it should be remembered that in the course of four years many vacancies will occur in the legislative body, vacancies of sufficient number to frequently change the character of the legislature and to alter its complexion. It is therefore evident that if we relied upon special sessions of our law making body, it might happen that by the action of one or two counties, the whole policy of the state government might be radically altered and without the consent of the people of the state or without giving them an opportunity to express their views. Moreover, the right of the people to secure such legislation as they may demand should not be limited to special sessions, which can only be convened at the discretion of the Governor. The right of the people through their trusted representatives to make, revise or repeal laws, should not be dependent upon the pleasure or caprice even of the Governor. The quadrennial system has failed to realize the hopes of its advocates and should be abandoned and when a new constitution is framed, we should restore the state legislature to the full constitutional powers that should be possessed by every law making body. Unnecessary restrictions and limitations upon legislative power is in effect a check upon the power of the people to govern themselves and too frequently hampers or forbids wise and progressive legislation.

If feverish and unseemly haste are to be avoided and full opportunity given for debate and consideration, the pres-

ent limitations upon the length of legislative sessions should be abandoned. We should not unwisely fetter legislative action or deny to the people law making bodies meeting often enough and long enough to give voice to their calm, sober and serious judgment.

REFORM OF LEGISLATIVE DEPARTMENT.

The improvement then of the legislative department is admittedly the most important duty that would confront a new constitutional convention. In the reorganization of the legislative department, the guiding consideration should be to make such changes as would elevate its standard and remove the distrust that now exists.

We should not undertake to abolish, but rather to reform our lawmaking body. Nor should we undertake the task in the pessimistic spirit that controlled a majority of the members of our last constitutional convention. They seemed to have reasoned this way about the legislature, that it was a necessary evil which could not be abolished, but its power to do harm might be considerably lessened by allowing it to meet only once in four years. It would be better, they thought, if it did not meet at all, but as there must be some body with power to make laws, to pass necessary appropriation bills at the beginning of each state administration, we reluctantly consent to its meeting quadrennially. We only regret that we cannot abolish a body that passes so many bad laws, that causes so much unrest, business disturbance and public apprehension, but as we cannot well do that, we will allow them to do as little harm as possible by letting them meet as seldom as possible and in addition we will nullify as far as we can their power to do harm by placing every conceivable restriction on their power to legislate. This was practically the course of reasoning of the constitution makers of 1901, yet this reasoning embodies a very singular admission for a self-governing democracy to make, a confession that government by representation was a failure.

But, call it what you will, there must be a lawmaking body in every Democratic government. As President Wilson once said, "A government must have organs; it can not act inorganically by masses."

If, therefore, the law making power can not be entrusted to representatives, it must necessarily be exercised by the people in their primary capacity. We must therefore either have a legislature or substitute for representative government direct action by the people, "the Initiative and Referendum," a system to which more serious and conclusive objections can be made than to any other form of law making ever undertaken. As Lord Bryce said about the initiative and referendum, "Whatever may be the advantages, the demerits of the system are evident." Its adoption would be in effect, the substitution of a new and untried system, contrary to our traditions and policies. Representative government would be abandoned or largely restricted and direct government by the people substituted. As a distinguished writer on American government recently said, "Such a fundamental principle and tradition as that of representation should not be thrown away unless the change can be justified by a specific, comprehensive and conclusive analysis of the causes of the failure of state government." The argument of the advocates of the initiative and referendum is that as their representatives have betrayed their trust, the people must resume the power they have delegated. Yet it does not necessarily follow that because many legislatures have been corrupt or inefficient or dominated by special interests, that the representative system is a failure. If men who are unworthy or incompetent are elected to the legislature, who is to blame? Is no censure to be attached to the people by whom they are voluntarily selected? Is vox populi vox dei? If the people either through indifference or apathy, select unworthy representatives, would it not necessarily follow that through the influence of the same apathy and incapacity, they would make poor law makers

and pass many bad laws. An analysis of the causes of legislative corruption and inefficiency should not be predicated upon the old and baleful American tendency of always ascribing failure of our state governments to some personal betrayal of trust. Is it never the people who are to blame? As a matter of fact, if the people are not to blame then our whole scheme of representative government is a failure.

But it is not representative government which is a failure, but the methods, practices and organization we adopt to give it expression. In the reorganization of the state legislature we should remove all unnecessary restrictions upon legislative competency and increase its powers and responsibility. We should restore the annual session, nor would the restoration of the annual session constitute any radical change in the well settled policy of the state. We must remember that annual sessions prevailed in this state until 1875. The introduction at that time of the biennial system was due to two causes, the pressing necessity that confronted the constitution makers to reduce expenses and save the state from threatened bankruptcy, and a distrust of the legislature engendered by the extravagance and profligacy that characterized the legislatures of the reconstruction era.

The members should be elected biennially. The session should be limited to sixty days, with the proviso that it could be extended to ninety days by joint resolution, if such joint resolution was approved by the Governor—his disapproval to be overcome, only by a two-thirds vote. The constitution should fix the date when the legislature is to convene. The senate should be elected for a longer term, three years, and divide into classes as prescribed by the constitution of 1819 as amended. The members of the house should be elected for two years. With abundant time for debate, and consideration of every important measure, it would be discovered that the legislative output would be diminished instead of being increased.

But the most important and necessary reform would be a radical decrease in the membership of the legislature. The practice that now prevails of giving a representative to each county should be abandoned. The house of representatives should be composed of not over thirty members, two from each congressional district and ten from the state at large. The senate should contain fifteen members, one from each congressional district and five from the state at large. This membership of forty-five members would be sufficiently large to represent every portion of the state, and the reduced membership would increase the importance of the office and elevate the legislative standard.

The election of a certain proportion of its membership from the state at large would unquestionably elevate the tone and character of the legislature. Under the present law the member must be a resident of the county he represents. Usually he acts on the presumption that his political reputation and usefulness depends upon the number of bills he can introduce and the amount of appropriations he can secure for his county. The state treasury is therefore regarded as a grab bag, to be looted in the interest of his constituency. He is not a representative of the state, but of a county, and the interests of the county and not the state are to be first considered. If there is any conflict, his vote and influence is always to be counted on for the county. It is by the vote of his county he was elected, and upon that vote he relies for future political honors. It is safer to offend the public sentiment of the state than to lose caste with his own constituency. It is to the county and not the state that he believes he owes first allegiance, and with so narrow a horizon from which he gets his outlook of state affairs, it is not remarkable that the state's interests are unprotected. To every Governor has come the disquieting reflection that the state has few friends in the legislature. To remedy this deplorable condition, is the purpose of the suggestion that a portion of

both houses of the legislature be elected from the state at large.

The present salary is utterly inadequate. It would be better for the state to invite free service from its citizens in the legislature than to pay the miserable pittance she now allows. The salary of the reorganized legislature should be commensurate with the dignity of the position and the character of the service. The members of the house should be paid not less than twelve hundred dollars a year and the senators fifteen hundred dollars, with mileage going and returning. It would secure a higher class of membership to pay no salary at all than the small amount now allowed.

With the election of a portion of the legislature from the state at large, with the decrease of membership, the payment of adequate salaries, the removal of all unnecessary shackles on legislative action, we would elevate the tone of the legislature, the ability and character of its membership, and largely increase its powers and responsibilities.

With a legislature so constituted, the public spirited and energetic men of every community would eagerly seek legislative service and the state legislature would become what the framers of our institutions designed it to be "sensitive and efficient instruments for the creation and realization of opinion," which is, after all, the real purpose of constitutional government.

THE JUDICIAL DEPARTMENT.

The Reorganization and Reform of our entire judicial system and rules of practice and procedure.

For the past few years the bar of Alabama has been engaged in an organized movement to secure reform of our illogical and antiquated methods of judicial practice and procedure. During the last session of the legislature, this movement resulted in the enactment of an act, vesting

power in the chief justice and certain members of the supreme court to formulate and adopt rules of practice and procedure. The passage of this law, by necessary implication, repealed all laws in conflict with its provisions, even though no such repeal was provided in the act. Unfortunately, however, the legislature added at the end of the act, a proviso that it was not intended to vest in the supreme court power to repeal any of the statutes of the state and it now seems to be generally conceded that this proviso defeated the purpose sought to be accomplished, and made the law inoperative. The legislature did, however, pass an important law, by which the chief justice of the supreme court, was vested with control of the circuit courts, with power to assign judges and solicitors to other circuits where the dockets were overcrowded and congested or the trial of cases, both civil and criminal, delayed or prisoners in jail denied a prompt trial. He was also clothed with certain important administrative duties. Yet while all these reforms undertaken by the last legislature are important, they can not without other radical changes of organization secure that more inexpensive, vigorous and efficient administration of the law so imperatively demanded.

The fundamental reform about which there has been but little discussion by the bar or the people of Alabama and which in importance overshadows all others, is the improvement in the organization of our entire judicial department and our methods of selecting and retiring judges.

This reorganization of our courts can only be accomplished by a complete and consistent scheme, by which the whole judicial power of the state shall be vested in one branches, departments or divisions. Until this principle great court, of which all our judicial tribunals shall be of unified state courts is recognized and carried into effect, all our efforts to secure judicial reform will prove unsatisfactory and disappointing.

The system under which our courts were originally or-

ganized may have proven adequate for a frontier state, where population was scant and confined to rural districts, where travel and communication was slow and difficult, where commerce and industry were undeveloped and the legal problems were simple and confined to those which naturally arose in an agricultural community where primitive social conditions prevailed. But with the growth of wealth and population, these primitive conditions have long ceased to prevail, and yet we are relying on a court organizations. created to meet the simple demands of a frontier state for the solution of the many intricate problems, the increased litigation, and the law requirements of a highly complex and advanced civilization. In all departments of our industrial life, in manufacturing, commerce, agriculture, mining and even in the arts and sciences, we have made marvellous progress, and the simple methods of early days have given place to highly complex organizations, reorganized so as to secure the greatest possible efficiency and yet the type of our court organizations remains the same as they were during the days of frontier life. It has been truly said "we are, as it were, running our courts with hand power for a civilization which requires the service of steam and electricity and all the intricate organization which the efficient application of such power demands." In every field of modern life we have made improvement and progress except in the administration of the law. The organization of our courts remains the same they were in the days following the American revolution and we still continue to administer justice under rules of practice and procedure adopted and suited to the times of the Tudors and the feudal ages. As our wealth and population increased, as our manufacturing, industrial and commercial interests were developed and expanded, and our villages grew into towns and populous cities, and new and intricate legal problems arose, and the dockets of our courts became crowded and congested with civil and criminal cases, instead of reorganizing our

judicial system to meet the new conditions, which modern civilization produced, our legislature simply "spawned out new courts." That the spawn was too prolific we shall later proceed to demonstrate. These new courts were separate and independent administrative units. There was no responsible head for our judicial system, no superintendent clothed with power to supervise the operation of the different courts, to suggest and secure reforms, or speed the judicial machine to the highest point of efficiency.

Upon the admission of the state to the union and the adoption of the first constitution of 1819, the judicial system and type of courts which exists today were created. Each circuit was to contain no less than three nor more than six counties, and hence when a new court was created, it was called by some other name, such as city or law and equity or court of common pleas, though still having the jurisdiction of a circuit court. By the constitution of 1901, the provision that no circuit should be composed of less than three counties was stricken out. Prior to the constitution of 1901, there were but few judges and their work was fairly well apportioned. Since that time the number of courts has rapidly increased. At the commencement of this decade, we had in Alabama twenty-nine judges, but this number had been increased at the commencement of the last legislature until it has reached forty-nine, not including the judges of the supreme court and court of appeals and the probate judges. We now have more judges in proportion to population than almost any state in the union. England with a population of about thirty millions has only about 135 judges, less than can be found in some states of the union. At almost every session of the legislature since 1900, new courts have been created, and the establishment of these additional courts were frequently made without investigation or upon the insistent demands of delegations and lobbyists, inspired more by a desire to provide an office for some impecunious lawyer than to promote the administration of justice.

Had the work of the judges already in office been properly apportioned, the necessity for the establishment of additional courts could have been obviated. It never occurred to the legislature to reorganize our entire judicial system, fairly apportion the work of the courts and save the necessity for the creation of new courts, and the result was that there were some courts doing too much and some doing scarcely anything at all. In 1912, while Governor, I had compiled from the records of the different courts, a statement in the form of a table, showing the number of days occupied by the judges of the different circuits in the trial of causes during the years 1910, 1911 and 1912. The table compiled for the last year, 1912, makes the following startling disclosures:

Circuits:	Number of days in 1912.		
	With Jury.	Without Jury.	Total.
First - -----	32	--	32
Second - -----	22	--	22
Third - -----	62	7	69
Fourth - -----	45	8	53
Fifth - -----	25	--	25
Sixth - -----	42	6	48
Seventh - -----	83	8	91
Eighth - -----	67	25	92
Ninth - -----	74	3	77
Tenth — No Report-----	--	--	--
Eleventh - -----	42	23	65
Twelfth - -----	27	--	27
Thirteenth - -----	73	27	100
Fourteenth - -----	56	34	90
Fifteenth - -----	43	36	79
Sixteenth - -----	40	15	55

The officials of the county of Jefferson, the tenth circuit, failed to furnish the desired information, and hence were omitted from this compilation.

It will thus be seen that the shortest number of days

in which a circuit judge was engaged in the trial of causes during the year 1912 was 22 days and the longest 100 days. One circuit failed to make report and hence, taking the 15 circuit judges, their average days in holding court in 1912 was 68 and 1-3 days. No one, therefore, can very justly complain that the judges in Alabama were overworked. On the contrary, they were paid larger salaries for the work they actually did than any other state officials. A circuit judge at the time this compilation was made rendered no other services in the discharge of his duties than holding court, either with or without a jury. Taking into consideration the average number of days they sat on the bench, they received for their services the very handsome compensation of over forty-three dollars a day, a sum which ought to have been sufficient, at least, to have kept the wolf from their doors.

All these facts I submitted in my message to the last legislature, a body which professed to be inspired by the most intense desire to reduce expenses and prevent any unnecessary waste of the public moneys. In pursuance of their laudable and commendable program of retrenchment and reform, they appointed numerous investigating, or what were commonly termed 'smelling committees,' examined numerous state officials with the hope that they could besmirch the character of those to whom they were politically opposed, and coolly refused to reorganize our courts, reduce the number of our judges and end the inexcusable waste of the public moneys which the present system created. The facts I furnished were plain and unchallenged the unnecessary cost of the judicial system was patent and unmistakable, and yet the retrenchers refused to retrench and our hopes of judicial reform ended in bitter disappointment.

It will be observed that the compilation made in 1912 did not embrace the city or the law and equity courts or the courts exercising the jurisdiction of circuit courts under some other name. The compilation does conclusively

show, however, that there has been an utter lack of system, of care or proper investigation in the establishment of additional courts, that the legislature has been actuated by a spirit of great liberality and that the courts they did create, simply duplicated the work which was then being done by the regular circuit courts. We should have a sufficient number of judges to dispatch business and secure a speedy and economical administration of justice, but more than that amount is not only unnecessary, but a waste of the public moneys.

DEFECTS OF PRESENT SYSTEM.

What, then, are the defects of the present system of organization of our courts? The most fundamental defect is that our whole judicial system has grown up without harmony, unity or scientific arrangement, each legislature creating additional courts, until the present system has become a patch work which should be revised and reformed in the interest both of efficiency and economy. Each judge is a petty sovereign in his own jurisdiction and without power outside of his own restricted territory. He can by consent exchange with other judges of his own district or territory. He is not a state judge,, but a judge paid by the state, with jurisdiction confined to his own district or territory. He should by the express provisions of the constitution possess jurisdiction coextensive with the territory of the state in every court of similar jurisdiction. There should be but one court in the state, of which every other court is a branch or division.

Under such a system, the supreme, appellate and circuit judges, both in law and equity, would become not only judges of a circuit or county, but judges in every court of similar jurisdiction in the state. If the courts in one county should become congested, any of the judges, supreme, appellate or circuit, could be assigned to aid in dispatching its business. The conditions which have so long pre-

vailed in the state, where some judges were doing too much and some too little, would be ended, and the labors of all equalized and made uniform by some controlling administrative authority. The judges would not be overworked, but would be expected by reasonable service to earn their salaries, and do their full part in the administration of justice.

Another evil of the present system is the absence of any check on the power of the legislature to create additional courts, whether demanded in the interest of the proper administration of the law or not. They are too often influenced by the clamor of special delegations, organized by the aspirants or their friends, by lobbies or or the selfish pleas of special interests. There should be some competent authority, controlled by the chief justice as the responsible head of all the courts of the state, assisted by the judicial council, to determine when such additional courts are needed, before legislative action could be set in motion.

Another evil is that our code is filled with minute and rigid rules of practice and procedure, created by legislative statute, frequently varying in each circuit, with the result that there is a deplorable lack of uniformity of practice and procedure in the different courts or judicial divisions of the state, which is not only confusing, but which leads to waste of time and inefficiency.

Again, the judges of our supreme and appellate courts are only judges of their respective courts. They should be made the judges of every court in the state of inferior jurisdiction, with power therefore to hold any circuit or county court, if their other duties will permit. The chief justice of England frequently presides over a *nisi prius* court, where the character or importance of the case justifies his presence. Yet under the laws of Alabama, the highest judicial officers of the state are denied the right to preside over any court whose jurisdiction is inferior to their own. Cases of grave importance are frequently

tried in the circuit courts, where questions are involved which affect the interests of the entire state, and it would lend dignity and weight to the trial, to have the chief justice or a member of the supreme court preside.

ADMINISTRATIVE ORGANIZATION.

Our present system lacks a head. There is no one with authority to act as superintendent, to gather statistics, to inspect judicial transactions, to watch the trial of cases, and the practical workings of the court, to observe their failure or weakness and suggest improvements. If there is a miscarriage of justice, due either to the incompetency of the judge, the practice or procedure, the faulty organization of the business side of the court, lack of proper clerical aid, neglect of duty by court officials, or other causes, there is no one clothed with power or authority to make report or criticism, to suggest improvements or prevent the recurrence of similar failures in the administration of the law. An able and earnest law writer was so impressed with this condition, that in the journal of the American Judicature Society, he recently wrote a convincing plea for the creation of a chief judicial superintendent. In California his ideas have been literally endorsed by the proposal to create a commissioner of justice, who would be a judicial superintendent, but without machinery to enforce his recommendations.

The delay as well as the expense in the trial of civil and criminal cases, due largely to our unscientific type of court organization and to rigid rules of practice and procedure formulated by the legislature, instead of by the courts, the thousands of petty, frivolous and unfounded prosecutions in misdemeanor cases, inspired by the fee system, which clog the dockets of our criminal courts, have all become a growing evil and challenges the consideration of the bar and of all who are interested in giving the state a more economical and speedy administration of our civil and criminal laws.

REFORMING JURISDICTION AND ORGANIZATION
OF COURTS.

The remedy then for these conditions is the reform of the jurisdiction and organization of our courts. The English Court Reform Act of 1873 is a model of modernized courts. It is, therefore, unnecessary for us to attempt to secure reform of our courts by the introduction of legislation of an experimental nature. As Hon. Henry Upson Sims states in his admirable essay on "Reforming Judicial Administration," "the new system of courts created by the English Judicature Act of 1873 not only still works satisfactorily in England, but has been accepted as a model by students of reform and critics of common law institutions all over America as well."

The limits of this address will not permit an adequate summary of the English Judicature Act and I will therefore content myself with quoting the conclusions of a modern critic, Prof. Roscoe Pound, of Harvard, applied as his general recommendations for American adoption, as found in the article mentioned by Mr. Sims. Prof. Pound says:

"The whole judicial power of each state * should be vested in one great court, of which all tribunals should be branches, departments or divisions. * * * This court should be constituted in three chief branches: (1) county courts or municipal courts; (2) a superior court of first instance; (3) and a single ultimate court of appeal. The first should have exclusive jurisdiction over all petty causes. There should not be a separate judge for each locality. Instead, all the courts with petty jurisdiction should in the aggregate constitute one court, or a branch of the great court, but this branch of the court should have numerous local offices where papers may be filed and as many places for hearing causes in each county as the exigencies of business may require. * * *

"The second branch would be a superior court of first instance with a general original jurisdiction at law, in

equity, in probate and administration, in guardianship and kindred matters and in divorce. It should also have general jurisdiction. It should have numerous local offices where papers may be filed, and at least one regular place of trial in each county. * * * Some high official of the court should be charged with supervision of the judicial business of the whole court, and he should be responsible for failure to utilize the judicial power of the commonwealth effectively. * * * And the third great branch of the court would be a single court of appeal to which causes must go directly for review upon the law from the county courts or from any division of the superior court. All the judges of the commonwealth should be judges of the whole court."

The plan, then, proposed is simple, is neither academic, experimental or revolutionary. It has been in successful operation in England since 1873 and in the unified municipal courts of Chicago, whose business organization secured the utmost economy, efficiency and impartiality in the administration of law in the second largest city in the country. This plan for the unification of the judicial system was endorsed by the special committee of the American Bar Association in its report in 1909, the committee being entitled "A special committee to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation."

The committee says:

"The first principle which the committee desires to submit is that of unification of the judicial system.

I. The whole judicial power of each state, at least for civil causes, should be vested in one great court, of which all tribunals should be branches, departments or divisions. The business as well as the judicial administration of this court should be thoroughly organized so as to prevent not merely waste of judicial power, but all needless clerical work, duplication of papers and records and the like, thus obviating expense to litigants and cost to the public."

In speaking of this plan, the committee says, that while the whole judicial power should be concentrated in one court, the court should be constructed in three branches. 1. County courts, including municipal courts, having exclusive jurisdiction of all petty causes, all of them to constitute one branch with numerous local offices where papers may be filed and as many places for hearing causes in each county as the exigencies of business may require. 2. A superior court, (our circuit courts,) having a defined original, exclusive, general jurisdiction at law, in equity, in probate and administration, in guardianship, and kindred matters, and in divorce; this court to have numerous local offices where papers may be filed and at least one regular place of trial in each county and to be divided into at least two, and probably three, divisions—(a) one for disposition of actions at law and other matters requiring a jury or of kindred nature; (b) one for equity causes; and (c) one for probate administration, guardianship and the like. The first might be called the law division or the common pleas division, the second the equity or chancery division, and the third the probate division. The third branch would be a single ultimate court of appeal."

The principle of all these plans has been adopted by the American Judicature Society, a philanthropic association organized a few years ago to promote the efficient administration of justice. As stated by Mr. Sims in his article on "Reforming Judicial Administration," the society has published so far about a dozen bulletins, consisting of discussions and criticisms of the existing systems of judicial administrations in America, together with recommendations for its reform, and for the aid of legislators, the society has issued several complete model bills to be enacted into laws, where complete reform of the courts is contemplated, prefaced by proposed constitutional amendments necessary in most instances, as the model bills generally conflict with details in existing state constitutions." In Bulletin VII-A this society has published a very complete

draft of a state wide judicature act, completed only after being submitted to the criticisms and suggestions of distinguished lawyers in all parts of the country.

UNIFIED COURTS.

The basis principle of the reforms proposed by the committee of the American Bar Association, and of the American Judicature Society, is the unification of the entire judicial system of the state and the power given the chief justice to marshal all the judicial forces of the state to meet the pressure of business in any branch of the court or in any part of the state. They all contemplate complete and thorough supervisions of the business of all the courts by some one in high authority, such as the chief justice, with power to make reassignments or temporary assignments of judges to particular localities as the state of judicial business, vacancies in office, illness of judges or casualties might require, and with power subject to general rules, to transfer causes or proceedings in any court for hearing or disposition according to the condition of the dockets and to see to it that all the judicial power of the state is effectively utilized. The same general supervision which the chief justice gives to the whole court is exercised by each branch and each division, in each locality by some other officer who is especially charged with the duty and is responsible for the efficient and businesslike conduct of the affairs of the courts under his control and the disposition of causes upon the dockets. The plan of the American Judicature Society contemplates that the states should be divided into say six or seven circuits, with a corps of judges, one circuit judge made chairman for the circuit, with complete power to regulate the assignment of causes to the different courts in his circuit and to designate that judge who might be most fitted for the duty in each branch of the court. Such chairman will also have power to transfer causes from one division of the court to the other.

All the plans seek to secure a thorough business administration of the courts and to overcome the decentralizing conditions which now exist, by which the clerks and other officials of each court are practically independent functionaries over whom even the judge of their own court has but little control. It is important that the legislature should not undertake the formulation of detail rules for the business administration of the courts, but only to lay down general principles and leave it to the court to regulate details and to alter and improve the rules as the problems are met and the best solutions for them ascertained.

ECONOMY FROM UNIFIED COURTS.

There is another consideration of controlling importance in favor of a unified and thoroughly organized system of courts with a simplified practice, and that is the decrease in the number of judges and the expenses of the judicial department. The committee of the American Bar Association summed up the advantages of such an organization of the courts, of judicial business and the clerical and administrative work of the courts as follows:

"I. That it would make a real judicial department. The several states, they say, have courts but they do not have any true judicial department."

II. "It would do away with the waste of judicial power involved in our present system of separate courts with hard and fast personnel. Where judges are chosen for and their competency is restricted to rigid districts or circuits or courts, it is a familiar consequence that business may be congested in one court while judges in another are idle. The judicial department should be so organized that its whole force may be applied to the work in hand for the time being, according to the exigencies of that work."

III. "That it would do way with the bad practice of throwing causes out of court to be begun over again in cases where they are brought or begun in the wrong place. They may be transferred simply and summarily to the

proper branch or division or rules may provide that the cause be assigned at the outset to the place and division to which it belongs and no question of jurisdiction will stand in the way."

IV. "It would do away with the great and unnecessary expense involved in the transfer of causes, obviating all necessity of transcripts, bills of exceptions, certificates of evidence and the like, and permitting original files, papers and documents to be used, since each tribunal, as a branch or division of the whole court, may take judicial notice of all files, papers and documents belonging to the court."

V. "It would obviate all technicalities, intricacies and pitfalls of appellate procedure. An appeal would be merely a motion for a new trial, or for modification or vacation of the judgment before another branch of the same court. It would require no greater formality of procedure than any other motion."

VI. "It would do away with the unfortunate innovation upon the common law by which venue is a place where an action must be begun, rather than a place where it is to be tried, so that a mistake therein may defeat an action entirely instead of resulting merely in a change of place of hearing. This innovation is especially unfortunate when it is applied to equity causes where originally there was no venue. If all tribunals are parts of one court, there need be nothing beyond a transfer of the cause. All proceedings up to the date thereof may be saved."

VII. "It would obviate conflicts between judges of co-ordinate jurisdiction, such as unhappily obtain too often in many localities under a completely decentralized system, which depends wholly on the good taste and sense of propriety of individual judges or on the slow process of appeals to prevent such occurrences. * * * As most of our courts are organized at present, there is nothing to prevent any judge from trying any cause pending in the court he pleases, how foreign to the work he and his colleagues have agreed he shall attend to."

VIII. "It would allow judges to become specialists in the disposition of particular classes of litigation. The prevailing system of rotation is unfortunate. Usually where there are a number of judges, they take up in rotation civil trials with juries, equity causes and criminal cases. By keeping a judge continuously occupied in one class of cases, he becomes thoroughly familiar therewith and this specialization was the real advantage of the separate courts of law and equity. INSTEAD OF SEPARATION BETWEEN LAW AND EQUITY IN PROCEDURE, THE DESIRABLE THING IS SEPARATION IN ADMINISTRATION. The way to obtain this is to organize the court in such a way that the judges may be assigned permanently to the work in which they prove most fit."

IX. "It would bring about better supervision and control of the administrative offices connected with judicial administration and make it possible to introduce improved and more businesslike methods of the making of judicial records and clerical work of the courts."

All these plans for the unification and simplification of the organization of our courts could only be put in operation by amendments to the present constitution.

MODEL DRAFT OF A STATE-WIDE JUDICATURE ACT.

The model draft of the state-wide judicature act by the American Judicature Society embodies practically all the principles outlined in the discussion of the recommendations of the American Bar Association. The Judicature Society draft creates one great court composed of the following branches, viz.: an appellate court, a superior or circuit court, and a county court and district magistrates, and known as the general court of judicature.

Under this plan, our present supreme court and the court of appeals could all become members of the court of appeals, the supreme court constituting the supreme court division of the court and the appellate court another divi-

sion of the same court. The state would be divided into say five or six divisions and the present chief justice of the supreme court would be the chief justice of the court of appeals and the present circuit judges would be judges of the circuit or superior courts, with such additional judges as might be required. Each division of the superior or circuit courts would have a presiding judge, to be appointed by the chief justice from among the judges of that division.

The presiding justice of each division would have the entire control and management of the calling by the judges, sitting in the division, of the docket of cases assigned to his division, would superintend the preparation of the calendar of cases for trial in his division and make such classification and distribution of the same upon different calendars as he deemed proper. The chief justice would have power to interchange judges from one division to another, other than the presiding justice. He could make temporary assignments for a period not to exceed six months of any judge of any division, except presiding justices, to any other division. He could require any circuit judge not otherwise engaged in the trial of causes to take part in the sittings of any branch or of any division of the circuit or superior court. Each of the circuit or superior courts would be separated into two divisions: (1) the chancery, probate and domestic delations division; (2) the common law division, consisting of a certain number of judges.

This plan also establishes in every county, a county court which shall have all the jurisdiction now exercised by justices of the peace, jurisdiction in all civil matters both at law and in equity, in which the amount does not exceed five hundred dollars. It would also have jurisdiction of all criminal cases of less grade than a felony or where the punishment did not exceed a certain number of years in the penitentiary. Another wise provision is that such a court shall have jurisdiction of all civil cases, regardless of the amount involved, by written consent of the parties.

The chief justice and the associate judges of the appellate court are all made ex-officio judges of the circuit and several county courts of the states. The chief justice of the state is made the presiding justice of each and all of the county courts of the state but he may in his discretion appoint from among the judges of the superior or circuit or county judges, a presiding justice of the county courts in his place, to hold during his term of office or for such time, as he might specify.

JUDICIAL COUNCIL.

Another novel feature of the plan is the creation of what is termed the judicial council. This council is to be composed of the chief justice, the presiding justices of each of the several divisions of the superior or circuit courts and the presiding justices of the county courts, if he be other than the chief justice, but if not, then a county judge to be appointed by the chief justice in writing, one justice of the court of appeals and one judge of the general court of judicature, to be appointed by the chief justice. This judicial council is entrusted with very large and important powers. They can reduce or add to the number of judges of any division of the superior or circuit court, provided they do not exceed the number of judges provided by law, and provided that the reduction of the number of judges can only be effected when a vacancy occurs.

This council is entrusted with the power to make, alter and amend all the rules of pleading, practice and procedure in all the courts of the state, including district magistrates. They have power to regulate the duties of the officers of every court and the costs of proceedings therein. They are vested with power to make rules and regulations respecting the conduct of the business of the clerk for the general court of judicature and the jury commissioners and prescribe the duties of the clerk and jury commission-

ers and their subordinates and to regulate the sittings of the court of appeals and all other courts of the state. The act provides that all the pleading, practice and procedure in every court shall be repealed as statutes, but declared to be operative as rules of court for the general court of judicature, but subject to the power of the court and the judicial council thereof, to make, alter and amend the rules regulating practice, pleading and procedure in said court. Under this plan, there would be one chief clerk of all the courts in the state, located at the capitol, to be appointed by a majority of the judicial council, and to hold office at their pleasure. All the clerks now in office would be continued until the expiration of their terms. Upon the expiration of the term of office of the clerks of the courts in Alabama, the offices as it now exists would be abolished and the following substitute provided: there would be the office of clerk of the general court of judicature with branch offices throughout the state, to be established at such places as the judicial council might determine. Deputy clerks would be appointed in each county and increased according to a population basis. The office of register and master in chancery would be abolished upon the expiration of terms of those holding office. Masters would be eligible to sit in any court or to discharge any judicial function which the judicial council might authorize, and until such action, the duties of the master would be those now required by law. Another novel provision is that the masters would be subject to assignment to any other division of the circuit or superior courts by the chief justice, in his discretion.

As stated by the American Judicature Society, the purposes of their plan is to secure administrative authority, co-operation and coherence of effort. They state "that the spirit of co-operation, and the esprit de corps, of the entire judiciary is fostered by an annual convention of judges, at which the judges meet as a whole to receive the report of the chief justice and at which meeting they can sit and

recommend all such rules and regulations for the proper administration of justice in their courts as may seem expedient and to consider all complaints with reference to their courts and the officers thereof or consider such other matters in reference to the administration of justice as the chief justice may bring before them." In view of his large duties, powers and responsibilities, the chief justice is given a salary of fifteen thousand dollars per year. The fee system, wherever it exists, is abolished and all the fees now paid to registers in chancery, clerks and probate judges are collected and turned into the state or county treasury. It has been estimated that the adoption of this plan in Alabama would reduce the expenses of the judiciary more than one-half and would moreover prevent any waste of judicial power and secure more speedy,, vigorous, inexpensive, and efficient enforcement of the law.

SIMPLIFICATION OF PROCEDURE.

One of the most important reforms which all these plans contemplate is the simplification of pleading, practice and procedure. The ability of our courts to dispense justice speedily, and economically, has been largely lessened by legislative action. Questions of procedure, involving no substantial rights, are peculiarly within the expert knowledge of the judges and belong to judicial, rather than to the legislative branch of the government. There are many eminent authorities that contend that the regulation of practice and procedure in the courts by legislative enactments is an invasion by the legislature of the inherent rights of the court and violates the constitutional doctrine of the separation of powers.

Rules of procedure exist only to save time, to advance the business of the court, to secure to each party a fair opportunity to meet the case against him and to present his own case, and should not be allowed to be used as a method to obstruct business, waste time or defeat the ends

of justice. In matters of practice, pleading and procedure, therefore, it is evident that the rule-making power of the courts should not be hampered or fettered by legislative restrictions or inhibitions. They should be settled by rules of court, which might be changed as actual experience of their operation and application might dictate. Questions of practice and procedure consume a large amount of the time of our nisi prius courts, delay the administration of the law, and the decision of the many perplexing questions they create entails unnecessary labor upon our appellate courts. The delay and expense which now attends the trial of important cases will continue as long as the present, clumsy, inefficient and antiquated methods of practice, pleading and procedure remain.

It has been estimated that at least one-third of the work of our appellate courts consists in passing on the pleadings in personal injury cases. Vested with proper power, the supreme courts could easily prepare simple and short forms of pleading in personal injury and other cases, forms of complaint for every kind of action, and thus lighten the labors of the bar, of our nisi prius and appellate courts. During the last session of the legislature, I prepared and submitted for their consideration a simple practice act similar to the one endorsed by the American Bar Association, being the type of practice act adopted by the state of New Jersey, by which the supreme court was given the power to adopt rules of practice, procedure and pleading, and providing that such rules should supercede any statutory or common law regulation theretofore existing.

COMMON LAW POWER OF JUDGES.

The common law power of judges should be restored. The reason why trials consume so much more time in this country than in England is largely due to the fact that we have withdrawn from the courts their COMMON LAW POWERS TO EXERCISE CONTROL over the trial of the

cause. Clothed with the power vested in judges by the common law, a judge upon our bench could restrict counsel to the argument of relevant and material questions, could promptly overrule and discourage technical objections, could prevent useless and unnecessary consumption of time by the introduction of immaterial and irrelevant evidence or by the argument of questions as to which the court has a clear and decided opinion, and could without the fear of reversal, exercise the necessary authority so essential to the prompt and efficient administration of justice. With the present legislative restrictions, our judges are denied their common law power of summing up the evidence, and thereby presenting the issue clearly and intelligently to the jury, but are converted into mere presiding officers whose principal duty is to confuse the jury by submitting exhaustive presentations of legal questions. It has been claimed that the restoration to our state judges of their common law powers, would result in abuse or judicial tyranny but the prompt and impartial administration of the law which has characterized our federal courts as well as the courts in England, conclusively show that these fears are groundless. Increasing the power of our judges by restoring to them rights which have been exercised for centuries by the nisi prius courts in England would tend to elevate the standard of our courts and largely increase their efficiency and result in promoting a more speedy and impartial administration of the law.

Hon. Elihu Root, president of the American Bar Association, speaking of the statutes found in many states and quite recently urged upon congress, prohibiting judges from expressing any opinion to the jury upon questions of fact, makes the following convincing reply: "From time immemorial, it has been the duty of the court to instruct juries as to the law and advise them as to the facts. Why is it that by express statutory provision the only advice, the only clarifying opinion and explanation regarding the

facts, which stand any possible chance to be unprejudiced and fair in the trial of a cause, is excluded from the hearing of the jury? It is to make it certain that the individual advantages gained by having the best lawyer shall not be taken away. It represents the individual's right to win, if he can, and negatives the public right to have justice done. It is to make litigation a mere sporting contest between lawyers and to prevent the referee from interfering in the game. The fact that such provisions can be established and maintained, exhibits democracy's tendency to yield support to the human interest of the individual as against the exercise of even its own power by its own representatives and for its own highest purpose." In another part of his address, Mr. Root says: "The evil results of the absurdly technical procedure which obtains in many states really comes from intolerance of judicial control over the business of the courts. A clearer recognition of the old idea that the state itself has an interest in judicial procedure for the promotion of justice, and a more complete and unrestricted control by the court over its own procedure, would tend greatly to make the administration of justice more prompt, inexpensive and effective, and this recognition must come from the bar itself."

PROBATE COURTS.

Under all the proposed plans, all the jurisdiction of the probate court is vested in the superior or circuit courts. The office of probate judge is abolished. It is claimed that there is nothing so technical or difficult about probate procedure as to justify an independent set of judges for that work alone.

All probate business will be transferred to a branch of the circuit court and it is asserted that judges competent to handle general law and chancery practice can take care of probate cases better than lay judges. No doubt the judges of probate in office when such a plan is adopted will

be retained until the expiration of their terms of office. A corps of skillful clerks will attend to all the clerical duties of the office and all fees will be turned into the treasury.

JURY COMMISSIONERS.

Under the model state-wide judicature act, the jury commissioners are appointed by the judicial council.

JUSTICE OF THE PEACE AND INFERIOR COURTS.

Both are abolished. District magistrates take the place of the justice of the peace and inferior courts. They are attached to the county court and their number is determined by population and the discretion of the judicial council. All the justices of the peace, police magistrates and inferior courts are made by the act first district magistrates. Until otherwise directed by the council, the district magistrates exercise the judicial power of the county court in all matters within the jurisdiction of the justices of the peace, or any cause or matter within the jurisdiction of the county court, assigned especially by the county judge to the district magistrate, or any cause within the jurisdiction of the county court which the parties agree may be heard by the district magistrate. The county judge can transfer any cause from any district magistrate to the county judge or any associate judge of the county court for hearing and determination. The judicial council is authorized to transfer to the district magistrates all or such part of the judicial power of the county courts as they may see proper and can require such district magistrate to perform such duties with respect to the business of the county court or any branch thereof or of any branch office of the clerk of the general court of judicature in the county as the judicial council may determine. The immediate supervision of the work of the district magistrates is in the hands of the county judge; justices of the peace

are now practically independent of all supervision and this power of supervision on the part of the county judge eliminates one of the principal defects of the present justice of the peace system.

SELECTION AND RETIREMENT OF JUDGES.

Three plans have generally prevailed in this country for the selection of judges, appointment by the governor, appointment by the chief justice, and election by the people. Since the introduction of the primary system of nominations, this latter method has not proven very satisfactory in Alabama, and there has been a steady decline in the standard of the courts. Under the convention system, which had its origin in our representative theory of government, the lawyers constituted a very considerable proportion of the delegates and on account of their peculiar knowledge of the fitness of the applicants, a higher class of judges were selected. One advantage of the convention system was that there was a sense of responsibility on the part of the delegates, which unfortunately is too often lacking with the voter under the primary nomination plan. The necessary result is that in casting his ballot under the latter system, friendship, locality, personal obligations or prejudice, solicitation or activity of the candidate generally exercise a controlling influence. Under the convention system, the office frequently sought the man, whereas under the primary plan no man can be nominated who does not actively seek the nomination.

The consequence is that under the primary plan we are confined in our choice to those active politicians, who seek the nomination, and the candidate who is the best mixer, who conducts the most expensive press bureau, who employs the largest number of workers and agents and who is most industrious in seeking votes or who can appeal to local prejudice or passion, has the best chance of winning, regardless of qualifications. The test of fitness is no long-

er knowledge of the law, but the possession of those qualifications which enables one to become a successful ward politician. Knowledge of human nature, of influences that control human action is more important than profound learning of the law. The tricks of the politician count for more than the learning of a Story or a Marshal.

What then is the purpose of an appointment or election but to put into office that man who by reason of his legal knowledge, his impartiality and judicial temperament, independence and high character, guarantees a firm, vigorous and impartial administration of the law? Whatever system, whether by appointment or election, that will accomplish these results, is the system we should adopt.

The primary system and the popular election of judges does not tend to create an independent judiciary. On the contrary, its tendency is to incline the judge to yield to popular passion and prejudice, to be swayed by every passing breeze of popular sentiment and to allow his own reelection to exercise a controlling influence in his official conduct. Fortunately, there are many judges who rise above such grovelling influences and who do their duty, even though the thunder of popular disapproval light on their unterrified brows.

The latest conclusions of the American Society of Judicature suggests some very wise solutions of the evils of the present system in Alabama and are worthy of serious consideration. Under their plan, the chief justice of the highest court in the state and of the unified courts of the state should be chosen by the entire electorate of the state, for a term "neither too long to make him unmindful of public approval, nor too short to make the office worth the strain of repeated campaigns," and should be given the absolute power of selection and appointment of all the other judges of his court, whose positions become vacant during his term of office. It is further suggested by their plan that at stated periods, say at the expiration of three years, at the expiration of nine years and at the expiration of eighteen

years from the date of their appointment of each of these judges, the question should be submitted to the entire electorate with reference to the judges who have been sitting for those periods respectively, "shall the judge be retained? Yes or No? If a majority of the voters vote in the negative the judge is rejected and the chief justice appoints someone else to fill the vacancy.

This plan overcomes one of the chief evils of the present system. No reason can be shown why a judge who is satisfactory should be compelled to submit to a competitive race to retain his position. Whether appointed or elected, the sole question to be submitted to the electorate at the expiration of his term is "Shall John Doe, who has served continuously as judge ----- years be retained; answer yes or no." Then after being retained for two or three terms by the express consent of the voters, the judge is to be continued in office till the age of retirement, without further elections. This plan gives the people the right to recall a judge who is unsatisfactory, but until he is recalled there is no vacancy in his office, and even if the present system is continued, candidates seeking judicial positions must wait until the people have declared that the sitting judge is unsatisfactory and shall not be retained, before they can seek the office.

The campaign rivalry and unseemly contests between judges on the bench and candidates for their position, which under our system has done so much to impair the integrity and independence of the judiciary and to lower the standard of the judicial office, would be ended. A lawyer's reputation is largely local. The qualities which make a successful advocate and attract public attention are not necessarily those qualities which equip a lawyer for a judicial office. If it is difficult for the bar, then how much more difficult is it for the public at large to make a wise and discriminating choice between candidates for judicial positions. The judge on the bench should not be retired unless his services are unsatisfactory and until the people deter-

mine by an election that sole question, he should not be forced to enter into a competitive contest to retain his seat. The mass of the people, by whom the judges are elected in these competitive contests, are confessedly ignorant of the fitness or unfitness of the candidates, but they can readily decide whether the sitting judge has been satisfactory and should be retained.

CANDIDATES FOR JUDGESHIP.

With the ease and rapidity with which licenses to practice law can be ground out in Alabama, it is folly to suppose that every lawyer who seeks judicial position is qualified to discharge the duties of the office. Many are practicing law whose legal learning would not entitle them to license, where strict examinations were required. In every judicial election, there are candidates utterly unfitted, both by reason of moral character and legal knowledge, to hold judicial office, and yet under our primary system they may possess those very qualifications which win success in a contested election before the people. The state bar of Mississippi recently proposed a plan for a unified court in that state, based on the principles already discussed, and their draft of the proposed law for a state-wide judicial system contained a very novel and seemingly appropriate remedy for the evil mentioned. Section 10 of the proposed law provides that before any person, not theretofore having been a justice or judge, may become a candidate for any judicial office or for appointment to the same, he must be examined by the judicial council under such general rules as it may adopt, (1) upon his moral fitness, (2) upon his administrative and executive fitness, and (3) upon his legal learning, and must have procured a certificate of qualification upon such examination. After having procured such certificate, he is thereafter considered as qualified, and can become a candidate for judicial office.

RETIREMENT OF JUDGES.

Under the present constitution, a judge can only be removed from office by impeachment. If the judges are to be appointed by the chief justice, as suggested by the American Society of Judicature, then there should be some other simpler method of removal from office. The plan suggested by the Mississippi bar is worthy of consideration. It provides that a judge or justice may be removed at any time by impeachment, by a two-thirds vote of each branch of the legislature, and that any circuit or county judge may be removed by at least five-sevenths vote of the judicial council for inefficiency, incompetency, or neglect of duty or conduct unbecoming a judge.

The adoption then of the plan for one great court of which all courts of the state are branches or divisions, according to the model law drafted by the American Society of Judicature, and the recommendations of the English Judicature Commission, would unquestionably give Alabama the best judicial structure of any State in the Union. It would not only save the state many hundreds of thousands of dollars by reducing the expenses of the judiciary one half at least, but would moreover remove the embarrassing, costly and inexcusable defects of our appellate procedure. It would prevent any waste of judicial power, the delays and costs of appeals, of dismissals on account of mistake in venue, the duplication of clerical work, but would thoroughly organize the work of every court, place the power to make rules in the courts where they belong, and enormously increase the vigor, efficiency and economy of the administration of the law. In this great movement for judicial reform, the bar should become the leaders and not allow any ultra spirit of conservatism to check their zeal in a cause so vital to the future welfare and progress of the commonwealth. When these reforms are accomplished, then and not until then will the promises of the Great Charter be realized—"We

will sell to no man; We will delay to no man; We will deny to no man, either right or justice."

EDUCATION.

Our entire educational system should be revised, harmonized and co-ordinated, so as to prevent unnecessary duplication, and waste and secure the greatest efficiency and economy. A state board of education, vested with the very fullest administrative powers, authorized to harmonize our entire educational system, so as to prevent duplication and waste, to employ suitable agents and experts, and to prepare and recommend suitable legislation, should be created. This board of education should be entrusted with the management and control of our normal colleges, agricultural district schools and high schools, and should supersede the boards now established for the management of those institutions. The management of all of our educational institutions, including elementary schools and high schools and normal colleges, by one board would secure more economy and efficiency in management. The state superintendent of education is now the head of our educational department, but with the multiplicity of duties imposed on him by law, it is impossible for him to give that attention and supervision to the entire educational system which is necessary. The present constitution appropriates nearly one-half of the revenues of the state derived from taxation of property for the support of our elementary schools, but with the present amendment, authorizing local taxation, such a burden on the state treasury is both unwise and unnecessary. The state should continue to make sufficient appropriations for the support of our elementary schools, but the larger proportion of their revenues should be derived from local taxation. With this relief to the state treasury, the present deficit would be overcome and proper appropriation made for the maintenance and support of the state university and other higher institutions of learning.

Under the system now prevailing, our higher institutions of learning will continue to clamor at every legislative session for additional appropriations. The result will continue to be a system of log-rolling and lobbying, appeals to local prejudice or local interest, which can but result in making the appropriations for these higher institutions of learning unequal and discriminatory, leading to uncertainty, jealousy, rivalry, confusion and demoralization of our entire educational system. With the relief of the treasury from the burdens formerly imposed, a uniform proportion or percentage of the taxable income of the state should be appropriated for the support and maintenance of the University of Alabama, Alabama Polytechnic Institute, the Alabama Girls Industrial School, and the State Normal School, with the result that as the state grew in wealth and population, the income of these institutions would annually increase.

While provisions in the nature of statutory enactments should not be incorporated in the state constitution, yet such a proportion or percentage of the taxable income of the state for the institutions mentioned should be provided by the framers of our new constitution, so as to relieve these institutions of the uncertainty of their incomes, resulting from the changing moods of the legislature, and so as to allow them to proceed with their work and the procurement of necessary equipments without delay.

LIMITATIONS ON USE OF SCHOOL MONEYS.

Another provision of the constitution in reference to education which should be revised is Section 261, which provides that "Not more than four per cent of all moneys raised or which hereafter is appropriated for the use of public schools, shall be used, or expended otherwise than for the payment of teachers employed in such schools, provided that the legislature by vote of two-thirds of each house may suspend the operation of this section." The result of this provision of the constitution is that notwith-

standing the munificent appropriations made for the support of the public schools, the state is denied the privilege of constructing school buildings with proper equipment, and the result has been that our rural school buildings are poorly constructed, inadequate in size and lacking in those important conditions, equipment and grounds which are so essential to the progress of elementary education. If a just and liberal proportion of the vast sums of money which the state has expended for the common schools had been devoted to the erection of proper buildings, the purchase of suitable grounds, libraries and other equipment, the standard of our elementary education would have been materially advanced, better teachers attracted and the future of our common school system would have been more hopeful and encouraging. The new constitution should provide that our high schools should be mainly supported by local taxation. In no other state except Alabama is the entire burden of their support imposed upon the state treasury.

APPORTIONMENT OF SCHOOL MONEYS.

One of the most vicious provisions of the present constitution is the requirement of the apportionment of school moneys on the census plan. This apportionment is not based on sound principle and is both unsatisfactory and unjust. It does not accomplish the equalization of burdens and advantages, and its abandonment in the interest of justice is the first and most important step in educational reform. Instead of stimulating communities to make every effort to increase school attendance and to improve school conditions and awaken local pride, it tends to place all local effort at a discount and makes it to the interest of the school teacher to discourage school attendance. Under the constitution and laws of Alabama, a census in July of every even numbered year, enumerating all the children of school age residing in each school district, is made. This method offers a constant temptation to communities to

pad their census list, so that the census money to be drawn may be larger in the total amount and in per capita value, on work actually done by the schools. This padding of the census, though often resorted to is not easy to discover, for those lists are generally accepted without question. It is easy, however, to see that the more children of school age that are shown upon the census lists in each county, the greater will be the amount of school money distributed in that county, and therefore a greater temptation to the teachers of that county to pad the lists. For what purpose is it this money is apportioned to each county? Is it to educate those children who are already being educated in the private schools and who do not attend the public schools? No. Its purpose is to educate those who would otherwise be denied an elementary education. It is evident, therefore, that the present method of apportionment gives the money of the state to communities for the education of children who do not attend or expect to attend the public schools. This basis of apportionment wholly ignores the number of children that attend private schools. It necessarily follows that as private schools chiefly exist in the cities, this basis of apportionment gives the cities more money in proportion to the number of children who require elementary education than is given to the rural districts. The purpose of the law is actually defeated by this method. It has been truly said that where the census exists, communities are "stimulated to get every possible name on the census list, but there the stimulation ends."

What we should seek to encourage is increased attendance and extension of the amount of instruction offered, better quality of teachers, and more teachers, longer terms, thereby making the public schools even better than the private schools. Yet all these important educational incentives are ignored and disregarded by the census system. The larger the census list the larger the amount of money that will be apportioned to the county, and therefore the smaller the actual attendance or school enrollment, the

larger the salary of the teacher and the other school officials. Under the present constitutional system, we put a premium on non-attendance and actually encourage the school teachers of the country by considerations of their own personal interest to discourage school attendance. The real unit of cost in our public schools is not the number of children who may or may not attend but the salary or the cost of the teacher. It is estimated that the average number of pupils, which the average teacher can teach, is about forty, and that therefore a school with a teacher that teaches only about ten pupils, costs as much as a school where the teacher teaches forty. The best authorities on the subject claim that the most equitable basis for the distribution of school funds is according to the number of teachers actually employed and the daily attendance multiplied by the length of the term. There could not be a worse plan than the one that our constitution now requires, one leading to more inequality, injustice and waste of the public moneys.

The new constitution should make provisions requiring the consolidation of our rural schools and to place checks upon the power of the legislature to create additional institutions of learning of a local character at the expense of the state government.

TAXATION.

All thoughtful students of taxation are united in the opinion that the legislature in dealing with the subject of taxation should not be hampered by a constitutional provision requiring them to enforce uniformity in all classes of taxation.

No satisfactory, just and scientific taxing system can be established in any state which contains this constitutional mandate. Under the constitution of Alabama every piece of property must be taxed at the same rate, real and personal. Professor Ely, a noted authority on this subject says: "A one uniform tax on all property in direct taxa-

tion never has worked well in any modern community or state in the civilized world, though it has been tried thousands of times, and although all the resources of able men have been employed to make it work well." Constitutional provisions as to uniformity of taxation have long become obsolete and the states which have the best system of taxation, permit their legislatures to classify property, with proper restrictions against unfair discrimination. The attempt to tax all property equally, has broken down completely in the case of personal property, and especially in the case of intangible personal property. A forcible illustration of the benefits which result from giving the legislature power to classify property is found in the experience of the state of Minnesota. For more than sixty years Minnesota had been operating under a general tax principle of uniformity and equality regardless of the nature and use of the property. At no time had that state succeeded in getting more than a small fraction of personal or intangible personal property on the tax rolls. Realizing the failure of the old system, after more than half a century of unsuccessful efforts, the legislature of that state in 1911, enacted a law providing for the separate listing of money and credits and imposing a flat tax rate of three mills on the dollar in lieu of all other taxes. In 1910, the year before the law became operative, the assessed value of money and credits amounted to \$13,919,806; in 1911, the first year under the new law, the amount returned for taxation on money and credits was \$115,676,126, an increase of seven hundred and thirty-one per cent over the preceding year. In 1912 the assessments of money and credits rose to \$135,034,476, being, according to the report of the tax commission of that state, an increase of sixteen and seven-tenths per cent over 1911 and eight hundred and seventy per cent over 1910.

In our efforts to improve our taxing system, we are confronted with the fact that a tax assessor is not subject to removal by the governor or the state tax commission. In

those states which have approached nearest in establishing just and equitable methods of taxation and uniformity of assessments, the assessors have been put under the control of the state tax commission or the governor, and made subject to removal for inefficiency or neglect of duty. The tax assessor elected now by the people of the county is controlled by local influences, and no power is vested in the legislature to authorize his removal for failure to discharge his duty or to properly aid in securing uniformity and equality in assessments. The only remedy is by impeachment in the county in which he lives and before a jury of the taxpayers whom he might favor.

EMINENT DOMAIN.

Under the constitution of 1875, the power to exercise the right of eminent domain was vested in municipal and other corporations and individuals, provided that just compensation for the property taken, injured or destroyed was paid for before such injury or destruction. I call your attention to the fact that the same provision was incorporated in the constitution of 1901, but with the additional provision that in the event of an appeal, upon the payment of the amount of the damages assessed into the court in money, and the execution of a bond in double the amount of damages assessed by the appraiser, that the corporation or individual obtaining judgment has the right of entry upon the property. Under this singular constitutional provision, a corporation or individual seeking condemnation will immediately upon a judgment, notwithstanding an appeal, secure possession of the property. The money deposited in court was not paid to the owner, was not under his control, and must remain in court until the appeal is finally determined. The owner of the property receives no interest upon the fund deposited in court, even though the appeal might last for years, and all during the time of the pending appeal, he was deprived of the use and control of his

property. Therefore, the municipal or other corporation or individual invested with the state's sovereign power of eminent domain, could take possession and have the undisturbed use of the property of the citizen during the whole time the appeal was pending and the citizen be denied any interest on the money deposited or any compensation for the use of his property pending the determination of his appeal. The present provision of our constitution works a great injustice to the private citizen, and a provision on this subject as found in the constitution of 1875 should be restored.

GENERAL SUMMARY.

Under the constitution as it now exists, the state is denied the right of engaging in internal improvements or building a single mile of pike road, or using its convicts for road improvement, or providing sufficient revenues to maintain its larger cities and towns. The state is denied, in effect, the right to tax inheritance, a large source of revenue to about forty states of the union. Alabama is denied the right by the present constitution to maintain a proper system for the inspection of merchandise, of foodstuffs, or an adequate pure food law, by that provision which provides that no state office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity.

Prior to the constitution of 1875, the state had always exercised the power to inspect merchandise and to create officers for that purpose. The abuse of this power during the era of reconstruction lead to the incorporation in the present constitution of this provision. It is true that our supreme court has held that the only limitation imposed on the legislature by this provision is that no state office shall be created, but it is utterly impossible to secure proper inspection of merchandise and drugs, of our manufacturing commodities, fertilizers, foods and drink, unless that

inspection is placed in the hands of competent men with an adequate salary.

The state of Alabama has an easement in the bed of every navigable stream in the state, yet has no power in the interest of the people to acquire riparian rights or to utilize the energy from falling water, on account of the provision which forbids the state from engaging in any work of internal improvement. In the state of New York, its conservation commission has acquired for the use of the state, riparian rights on all navigable streams, so as to conserve that great asset for all the people of that state.

The executive power is hampered in carrying out the mandate of the constitution to see to it that the laws are faithfully executed, by being denied the authority to appoint or control all subordinate executive agents. The most important subordinate executive agent in the state is the sheriff and yet the chief executive has no power to remove him from office for flagrant neglect of duty or gross inefficiency.

Under the present constitution, the state is deprived of the increased efficiency and experience which certain public officials have acquired by service in public offices. The attorney-general, the superintendent of education, the state auditor, state treasurer, commissioner of agriculture and industries and secretary of state are made ineligible for reelection. If any great corporation should make its principal officials ineligible for reappointment after a term of four years, would any one question that it was hindering instead of promoting efficiency in its service? Would any corporation controlled by sound business principles adopt so suicidal a policy? Can any one contend that actual experience in office, that knowledge of detail which can only come from service, tends to lessen efficiency and usefulness? The state of Alabama is the greatest corporation in its borders, and yet it deliberately adopts a policy opposed by every rule of successful business, a policy which would speedily bring any successful business corporation

to bankruptcy and ruin. Frequent change of officials might have had some basis of excuse in olden times, when there was no system for the examination of public offices. The state, however, now has a very thorough and complete system for the examination of all public offices, and even that excuse for this restriction no longer exists.

Moreover, since all public officials under the system that now prevails, are nominated by a primary, the people should not be denied the right to retain their services, if their records justify public confidence. Political considerations and not a desire to promote the efficiency of the civil service must have inspired the convention of 1901 in adopting this provision. It was the outgrowth of that old baneful and discarded political theory that party interests were best promoted by rotation in office.

By the constitutional provision that no county shall be subjected to any charge for which it was not liable at the time of the adoption of the constitution, the state is denied the right of imposing upon the county the burden of feeding prisoners charged with misdemeanors and for whose hire the county and not the state receives compensation. The tendency of recent legislatures has been to impose unnecessary burdens upon the state treasury, for the support and maintenance of institutions which are local in their character, and for matters which only affect specific counties and which they should properly assume.

Under the provisions of the present constitution, it would seem that the evils of the fee system cannot be eradicated without a constitutional amendment. The constitution of 1875 did not contain a provision, similar to the one found in the present constitution, but left the legislature free to deal with this important subject. All limitations on legislative power as to the fees of public officials should be stricken from our fundamental law.

The general movement for the short and simplified ballot, which has justly met so much favor in many of the states of the country, would be checked or hampered in

Alabama by the requirements of the present constitution, requiring the election of so many officials by the people. The sentiment in favor of the short ballot is based upon recognition of the fact that greater efficiency in the administration would be secured by more concentration of power in the hands of the governor. The recent constitutional convention of New York provided that practically all state officials of an administrative or executive character should be appointed by the governor and this provision met no public opposition, the rejection of the constitution being based on other grounds.

We all recognize that under the system now prevailing, the mind of the voter is confused by the large array of candidates for various offices for whom he is expected to vote, of whose capacity or fitness he can usually have no personal knowledge or information, as to whose election he is utterly indifferent, with but faint or confused conceptions of the duties of the office the various candidates are seeking, and with the necessary result that many important officials are nominated and elected through chance, barter or trade, through the indifference of the electorate, the position of their names upon the ballot, or even the effect which a certain name may have upon the voter, or through other influences, which should not affect the election of state officials.

It is generally believed that the people would bitterly resent any curtailment of their right to select state officials by their ballots. On the contrary there is a general feeling of resentment on the part of the voter in being required to vote for so many offices, for candidates of whom he has no personal knowledge, and in whom he has no special interest, to make a selection when he knows that he is not in a position to make a discriminating choice. Outside of the office of governor and United States senator, he is more interested in his local county candidates and he would welcome relief from the burden of making selections from a long array of candidates. The people are pa-

triotic and they desire that method of selection which will most promote the public service and secure the most efficient government.

Under the constitution, the state is denied the right to any interest on moneys which it may deposit in banks. It is extremely doubtful under the provisions of the present constitution, whether the public moneys can be legally deposited in any bank. Both the state and county should have the power to deposit public funds in banks, the deposits being secured by state bonds or other absolutely solvent securities, and should be permitted to exact for the benefit of the public, a reasonable return in interest. If the state borrows any money, it must pay interest, and yet under the present constitution it has deposited millions in banks, for which it cannot, and does not receive any return. The present limitation from taxation by the municipalities of the state denies them the power to assess and collect sufficient revenue to properly maintain the schools, an adequate system of street improvements and other public utilities, and to properly support other important departments of the city governments. The result is that our municipalities are forced to practically impose the entire burden of the improvement of streets and sidewalks, of sanitary sewers and other necessary improvements, on the abutting property owners, and to supplement their revenues by a system of license taxation, recognized as the most unequal and arbitrary method taxation which can be imposed. On account of these conditions the onerous rates by way of license taxation lessens and discourages productive industry and commercial enterprise.

Prior to the constitution of 1875, prosecutions for misdemeanors could only be instituted by presentment by grand juries. By the constitution of 1875 the legislature was authorized to dispense with grand juries in certain misdemeanors, and by the present constitution the legislature was permitted to dispense with grand juries in all misdemeanors. In view of the large number of misde-

meanor cases that clog the dockets of our courts, furnishing fees for sheriffs, and imposing an enormous expense on the state for feeding prisoners, summoning witnesses, and trials, many of which are based on frivolous and unfounded prosecutions, the new constitution should provide that prosecutions for misdemeanors should be commenced only by presentment by the grand jury or by information approved by the circuit or county solicitor, the attorney-general or his assistants. The inhibitions of the present constitution upon working convicts upon the public roads should be removed. All the charitable, eleemosynary institutions of the state are now under the control of separate boards of trustees, who receive no compensation except in some instances an allowance for actual expenses. These boards usually meet at long varying intervals, are in session but a few hours and derive practically all the information they obtain from the officials in charge of these institutions. All expenditures of public moneys are therefore practically controlled by the superintendents and managers of these institutions and under the system that now exists, a constant, and thorough supervision of their business policy and fiscal cannot be expected, and is impossible of attainment. The state is now spending for the state insane asylum at Tuscaloosa and Mount Vernon, for the state school for the deaf, dumb and blind at Talladega, for the Alabama Industrial School for White Boys at East Lake, for the Alabama Reform School of Juvenile Negro Law Breakers at Mount Meigs, for the Alabama Home of Refuge at East Lake, and for the Confederate Soldiers' Home at Mountain Creek, over one half million dollars annually. The new constitution, therefore, should provide that one central board composed of three members selected by the governor, to be paid an adequate salary, should be created to supercede the present boards of trustees, vested fully with all their powers and with complete control of these state institutions. This board of control should have power to select all the officers of these several

institutions and to purchase all the supplies that are required, to establish proper methods of bookkeeping, provide a complete inventory of all the state's property, and to exercise the same power and control over these institutions, as if they were the board of directors of a private corporation. In addition, this board of control should be required to purchase the supplies for the state normal schools, the state high schools, the agricultural schools, the county high schools, the Alabama Girls' Technical Institute, and the supplies required by the state government for the state capitol, for the entire convict department and for each any every county jail in Alabama and for the University of Alabama and the Alabama Polytechnic Institute, when so requested by the authorities of those institutions, and should purchase supplies for any other institutions when so directed by the governor or requested by the manager of the institution. The establishment of such a board, instead of creating an expense would result in enormous saving to the state. The states that have adopted this system have secured enormous savings of the public money, greater efficiency in the management of these institutions; it has resulted in securing the application of thorough business principles in the management of the affairs of each institution, proper methods of bookkeeping and accounting and a complete inventory and a watchful supervision of the state's property. Such a board of control would supersede half a dozen or more private boards who are unable to give the state's business that attention which it deserves. The expense of maintaining the board would be a mere pittance compared with the enormous sum it would save the state treasury. Not only have such boards introduced greater business efficiency and management and secured large savings of the state's money by their wholesale purchase of supplies, by auditing expenditures and proper systems of bookkeeping, but they have relieved the legislature of the annoyance, confusion and uncertainty of attempting, during a legislative session with the pressure and hurry and

multiplicity of business, of determining what appropriation should be made for each of our charitable institutions, differing as they do in size, purpose, scope and surroundings. The legislature would no longer be subjected to annoying importunities from various local boards, but would secure all the desired information from one centralized board, composed of state officials, free from local influence, who have given all their time and attention to the management and supervision of the state's charitable and eleemosynary institutions. If Alabama could realize the results which have been obtained in other states from the establishment of such a board, the present appropriations would be found to be more than adequate, and a very large proportion of the moneys now expended would be returned to the state treasury. In view of the many conflicting provisions of the present constitution, the creation of such a board, defining its purpose and powers, should be made by constitutional provision. Such a board would also have the control of all the state lands now amounting to several hundred thousand acres, which are not properly supervised or protected.

The defects in our present constitution are so numerous and radical and so intermingled in the different sections that it would be practically impossible to remedy them by any manner or series of amendments. All efforts to remedy constitutional defects by a series of amendments have proven unsatisfactory. To undertake to revise the present constitution by a series of amendments would only result in making the present fundamental law a patchwork,

A state constitutional convention should be called by without harmony or symmetry.

the next legislature to take into consideration the entire subject and frame a new constitution. This constitution should provide a simple framework of government, remove the present unwise and unnecessary restrictions on the legislative and executive departments and restore both to their full governmental vigor. It should simplify and remodel

our entire educational and judicial system, strike off the shackles that now hamper the vigor of the state government and make the new constitution not a code of statutory law but an instrument which, while guaranteeing the fundamental principles of liberty, lays deep and permanent the foundation of an efficient and successful administration—a constitution which would be a model in its simplicity and vigor for every self-governing commonwealth where the representative system of government prevails.

The President:

Gentlemen of the State Bar Association: I want to express to Mr. O'Neal the thanks of the Association for his very able paper presented to us tonight. I made the statement yesterday that this is a seed bed, and the proper place for a paper of that kind. If I had not thought we needed a new Constitution before the paper was read, I am now satisfied we need something of that kind. What is the pleasure of the Association, the paper read by Mr. O'Neal is open for discussion.

Mr. Frank S. White:

In view of the lateness of the hour, I move that consideration and discussion of the paper read by Mr. O'Neal be postponed until the morning session tomorrow.

The President:

That course will be taken unless some gentleman desires to discuss it now.

Mr. Frank S. White:

Before entering upon a new feature of the program, it affords me pleasure to say that I have the opportunity tonight to confer a pleasure upon the members of this Association by a presentation. We have a member of the Association who began with the organization, who was with it in its infancy, worked with it through its youth and who is standing by it loyally at this time in its present strong manhood. That gentleman is not only a member of the Association, and been a consistent one through

the history of the Association, but he has been its faithful officer all the time; he was always ready to speak a good word for the Association and work for it when the clouds lowered above it, and always smiled his usual joyful smile when the sun was shining. Some day—we hope some far distant day, and if it were possible, we would hope it should never occur at all—this honorable servant and distinguished member will pass away. When he goes, we want something to remind us of the pleasure that he gives us now. I have the pleasure and opportunity of presenting to you a portrait of this distinguished gentleman presented by Mr. Coleman, the photographer at Montgomery. I will let the picture speak for itself; it is our distinguished Secretary-Treasurer, Col. Troy, and it seems to me that the face is just as joyous, as happy and as handsome as the original.

Mr. Troy:

Mr. President and Gentlemen of the Alabama State Bar Association:

I appreciate the very kind manner and words in which my friend, Senator White, has brought this matter before you; I appreciate the kindness of Mr. Coleman in presenting this picture to the Association, and I thank you, gentlemen, most cordially for the reception you have given it.

Mr. Mulkey:

Understanding the fact that most lawyers go to the Supreme Court at least twice a year, I move that the Librarian of the Supreme Court, Mr. Junius M. Riggs, be requested to exhibit this picture in an appropriate place in the Supreme Court Library.

Motion unanimously adopted.

On motion, the Association then adjourned until Saturday, July 14th, at 10 A. M.

THIRD DAY.

Edgewood Country Club,
Near Birmingham, Ala., July 14, 1917.

The Association met at 10 o'clock A. M. pursuant to adjournment, the President presiding.

The President:

After the interesting program of last night, which I know we all enjoyed very much, we have assembled here this morning with the unfinished program of yesterday. Under the rules of the Association the paper read by Mr. O'Neal is open to discussion for one hour, speeches limited to ten minutes. However, if the Association agree that we might conclude our regular program before taking up the discussion of that paper, even though the Association desires to discuss it, I suggest that probably it would be well to dispose of the regular business left over from yesterday which was postponed on account of the outing that we took. I think probably it would be better if we conclude yesterday's program before taking up the discussion of any of the papers that were read at the sessions.

Mr. Bradshaw:

It occurs to me that it would be a good time, while we have such a full attendance, to proceed with the election of officers for the ensuing year. If it be in order, I move we proceed to the election of officers.

Mr. Acker:

In regard to the election of officers, the rule has been up to a few years ago, that a committee appointed by the President nominate officers of the Association for the ensuing year; that rule was changed and the President elected from the floor, and the Vice-Presidents nominated by a committee appointed by the President, as also a Central Council and Executive Committee and Secretary-Treasurer. I move to amend the gentleman's motion that instead of proceeding to the election of officers that the

chair be requested to appoint a committee of five members to suggest nominations.

The President:

That was done last night.

Mr. Rudolph:

Our regular order would be to suspend the rules if we proceed with that purpose to go into the election of a President, and I make that motion.

Motion to suspend the rules adopted.

The President:

Nominations are in order for President of the Association for the ensuing term.

Mr. W. C. Davis:

The position of President of this Association is the highest honor within the gift of the lawyers of Alabama. One to fill that position should have not only learning but character, and, above all, independence at all times to stand as the sentinel upon the watch tower with an outstretched arm, an unrestrained thought and uncensored tongue to appeal to the craft. I desire to place in nomination for that high honor one that in my opinion, possesses these qualities, one who has proved his interest in the Bar of Alabama, in the administration of justice and in the progress of her laws by his consistent, faithful and effective attendance upon the meetings of this Association for years, probably the most regular attendant for years of most any member of the Association. I nominate as your successor, Mr. President, as the head of the lawyers of Alabama for the ensuing year, as their President, the Hon. Henry Upson Sims, of the Birmingham Bar.

Mr. Rudolph:

I second the nomination.

Mr. Harsh:

I move that nominations be closed.

The President:

You have heard the motion of Mr. Harsh, is there any

dissent? There appearing to be none, nominations are closed.

Mr. Stokely:

I desire to move that the Secretary of the Association be instructed to cast the ballot of the Association for Mr. Sims.

Motion adopted.

The Secretary:

Mr. President and Gentlemen of the Association: It gives me great pleasure to cast the unanimous ballot of the members of the Alabama State Bar Association for Henry Upson Sims, Esq., as President of the Association.

Mr. Sims:

I want to be where I can see all the gentlemen who were so good as to put me at their head, at least for the time being, of this Association. I am not used to making speeches as a President-elect of the Association, so any remarks I might make must necessarily be stumbling for lack of practice. Of course, I am intensely grateful to you for electing me President for the ensuing year. I realize that the election is not due to any eminence at the Bar, but rather as pointed out in the nominating remarks of Mr. Davis, because of the interest, I might say the intense interest, I will not say the unusual interest, that I have taken in this Association. I really regret, however, that no other names were put in nomination, although I appreciate the spirit in which the selection is made. Four or five years ago we began electing a President from the floor instead of selecting him by a committee based on tenure of office and activity in the Association, thinking it well to have as many nominated as members might desire. What difference would it make for one member to receive a vote or two the more, as all would unite afterwards in moving that the election be made unanimous. It is the good of the Association we ought to have in view.

I am fond of the Bar Association, I believe in the future of the Bar Association, and my belief in its future is

not simply a love of craft, it is not that I think the lawyers of Alabama are any better as a class than any other citizens of Alabama. I think I am far above that, although we all feel a love in our profession, but I intensely believe that this Association can be made a trusted factor in making the laws of Alabama as pointed out by Mr. Johnston yesterday.

This Association has not realized what it can do though it has shown great activity for ten years on this floor and sometimes before the Legislature. Nothing will bring us forward to do what we can do but the universal consciousness of the fact that every lawyer owes it to the Bar and to the public to take an active interest in this Association. If I am spared through this year it will be my policy to appoint to no committee of this Association any gentleman who has not promised me beforehand that he will take an active constructive part in doing its work.

We have, I am afraid, emphasized the social side of our meetings too much, and not the constructive side. Mr. Johnston was right when he said every one of us can be active participants in the government and laws of Alabama as if we were in the Legislature. Prior to the meeting of the last Legislature the Birmingham Bar took a special interest in bringing the judicial system out of the chaos in which it had been, and appointed a committee of seven, of which I was fortunate enough to be a member. We drafted a bill to consolidate the Birmingham courts, and every member worked on it and we crystalized it into what we thought was necessary for Birmingham. When we went before the intervening committee of the Legislature, we laid before them our plans, and I have never received from any body of men to whom I have been accredited to ask accommodation any greater courtesy than we received from these gentlemen. They did not agree with us; they had a broader system than we had in view; they told us to go back and assimilate our system to the

State system. But what I want you to appreciate is that the Judiciary Committee of the House and Senate and the Intervening Committee, gave us gladly a hearing on every point.

We want, and must have, the Alabama State Bar Association to do the same diligent work before the Legislature as the Birmingham Bar did. Of course, we were aided by our Representatives and Senator, but the real work was done by a local committee. I believe the Legislature would not fail to give careful consideration to anything suggested by the Alabama State Bar Association. We must have duty in view. It is ridiculous to think we are not better prepared than the Legislature to introduce constructive legislation if our committees do the work, and members do their share of the work on proper bills, do constructive work and not selfish work; and I do not believe that the Alabama State Bar Association would do anything but unselfish work, and we can get anything passed we ask.

In the past, I blush to say, that I have seen lawyers of Alabama laugh at the work of the Bar Association; we were not numerous enough to command respect. I believe that every member of the Bar ought to be an active member of this Association, the standards of the Bar will be raised, the esprit de corps will be developed, and every member of the Bar ought to point out to every other member that the Bar cannot be constructive unless he takes a part in its counsels and an active part in its work. We assume nothing unusual in saying we are better prepared to draw laws than those outside the legal profession. Being trained effectively in presenting the law the lawyer is the one to do it. Do we doubt that part of the cordiality of the committee of the Legislature to respond to the request of our committee from Birmingham was that they knew that the Legislatures in the main are controlled by the lawyers, that whatever is constructive in their work, what ought to be enforced, would be better

accomplished by acquainting the Bar of Alabama with what they were doing, and to bring it before the people? I desire to call to the attention of the Association that the immediate work of every lawyer here will be to get all the 1,350 lawyers in Alabama to become members of this Association; to get committees to feel that it is their duty to work, and then it will not be necessary for every lawyer in Alabama to offer to become a member of the Legislature of Alabama. Many of us cannot go; many might be willing to go but can't get there; many would like to go but not in a position to do the work necessary to be done, but a suggestion of the Bar can be made a demand when backed by 1,350 lawyers, and the Legislature will pay attention to it. I am not certain that we will not have an extra session of the Legislature this year. If we have 20,000 or 30,000 soldiers on the border, there would be a request that they be allowed to vote, and a request from 30,000 votes would get the extra session. If we want to do anything at the extra session the Bar Association must be getting ready, but we have barely time now between this time and the regular session of 1919. Mr. Davis has shown us what work is to be done. We begin this year and carry it on next year, and they will pass what we request to be done. The Mississippi Bar Association has drafted a consolidated court act that is supposed to be ideal, and the Mississippi Legislature will adopt it. It will eliminate the number of judges to a bare handful, lower the cost from \$500,000 to a little over \$100,000. It is drawn and is going to be introduced at their next session. Are we going to let Mississippi get ahead of us?

Our Consolidated Court Act was the most advanced stride forward in America when it was passed in 1915. But it was meager, it had to be construed, it was patched and worked over. But now it is for us to make it as it should be written, to do what has not yet been done, and make it the act on which we will move forward.

The President:

I want to congratulate you, Mr. Sims, upon the honor which has been conferred on you, and I want to congratulate the Bar Association of Alabama on the election of a man that I believe will administer its affairs to the best interest of the Association and for the welfare of the people of the State of Alabama.

The President:

Does any other gentleman desire to be heard?

Mr. Burr:

I would like to offer the following resolution:

Resolved, That the President is respectfully requested to appoint as one of the delegates to the American Bar Association from this Association, Hon. Wm. C. Fitts, Assistant Attorney General of the United States.

In presenting this resolution I might say that I know that our President expects to take the pleasure of making that appointment, but it will be a pleasing compliment to bestow with the request of this Association. I move the adoption of that resolution.

Resolution adopted.

Mr. Johnston:

I don't know whether it is in order now or not. I wish to offer a resolution, and if it is not in order that the rules be suspended, that Col. John, who was spoken of so highly here, is engaged in a work in which all lawyers are very much interested, and I feel sure that he will appreciate the endorsement of this Association. He is engaged in codifying the laws of Alabama at the request of some association, and move that this Association endorse the work of Col. John and give it our sanction and approval. If it be necessary, I move that the rules be suspended for the consideration of that motion.

Mr. F. S. White:

I would like to broaden the motion a little; I would not only like to endorse the work, but endorse Col. John for the work.

Mr. Johnston:

I accept the amendment.

Mr. Harsh:

I know very well that the work is good because I know the man, but I have never seen the work, and few men of the Association have seen the work he is doing. Are we going to put ourselves on record as endorsing a work that we have not seen?

Mr. Johnston:

He has not done the work yet.

Mr. Harsh:

How can we endorse it?

Mr. Johnston:

Endorse him to do the work.

A Member. The addition offered by Senator White it seems to me, should be the whole of the motion; not that we endorse work that has not been done, but confidence that it will be done all right.

Mr. Harsh:

I would oppose a motion to endorse the work when I do not know about it, but heartily in favor of a motion limited to endorsing Col. John in the highest terms for the work that he has been entrusted with.

Mr. Mitchell:

I do not like to intrude upon the situation, but it looks to me from my unenlightened standpoint, that this may be a hasty action. I know of no provision such as that spoken of by the gentleman. With all deference and respect and affection for Col. John it seems to me that the agitation of such a resolution in this Association, without more information, would be of doubtful propriety. If the resolution carries more than appears on its face I would like to know it, and the Association would like to know it; if it carries no more than that, it seems to me an unnecessary action, one that may possibly cause embarrassment hereafter and may in some degree be a thoughtless action. It seems to me that it may be a seri-

ous matter that is being treated too hastily and without any proper necessity. I could do nothing other than oppose the resolution without further information. I would like to have Col. John state the nature of the work he is doing.

The President:

The Association would be glad to hear from Col. John.

Mr. John:

I have never hesitated in telling the lawyers of Alabama what I am doing, have done and intend to do, and that is I am now engaged in compiling the statutes of Alabama just as they are, or getting them ready for presentation to the next Legislature so that they may have the material by which they can appoint a committee, read and revise it and adopt a code and get it just as quick as if the last Legislature had provided for the codification of the law. I will say now that you need not have any doubt that there will not be one joker in that work; there shall not be left out any section or part of any act of the Legislature; there shall not be left out one single citation either of the Supreme Court or of the Court of Appeals. I have already entered every one of those, I have already entered every act which has been repealed, I have added every one which has been amended, and I am now progressing with that work, and will be ready in time to submit to the next Legislature. As I said before, there shall be no change of existing law. When I come to a section that is awkwardly expressed, or could be better expressed, I shall not take the authority to change it as I think it ought to be, but a number of you, gentlemen, and the public, they will have the two in print, they can see the full proposition. In that way I think I can state without boasting, you will have the best and most complete code that has ever been made in Alabama. The plan of noting the decisions of the Supreme Court, if you remember the section on homicide I think there are ten pages of citation, and you have to read through two, three or

four pages before you will find the case you are looking for, there is no classification of it. Under the plan I am working on now every one of those citations will be classified and the sub-titles put in alphabetical order. You will find all cases of self-defense and retreat and provoking the difficulty, and so on, and those sub-titles will be in larger print. If you want the doctrine of self-defense you will look down and find all the leading decisions collated together. In that way I am confident that we will present to the next Legislature the best code we have ever had because we have had the advantage of all these decisions and discussions, and the lawyers having had experience with them in the courts and in their practice may be able to suggest how it could better be done. I can give you one illustration in which condensation can be had without the slightest danger of changing the law. The Supreme Court called attention to the fact that there are three acts on the subject of admitting a man to bail who had been convicted of felony and sentenced to the penitentiary for not more than five years. Those three acts have identically the same idea in them that they always had; the same sort of statute with reference to misdemeanors. By taking out a few words in print I could sit down and make the composite section and carry out the intent, and you may shorten it. Then again the subject of amendment of bills in equity, rules laid down nearly a page—the act of the last Legislature makes it one-fourth of a page. I can take that one short statute, put it in the place of the old three or four sections and when the committee comes to examine it they would know exactly which to choose, you have a choice between what is the law and what is suggested by learned lawyers should be the law. It can be done more quickly than any Code Committee has ever had the opportunity of doing. I thank you for your courtesy, and you will not regret any endorsement you can give me; the work will be done as faithfully and honestly as a man can do it.

Mr. Dixon:

A motion or resolution of this character puts a man in a very embarrassing situation. I cannot see how this Association can with any show of intelligence put themselves on record as endorsing something that does not exist. Now I have the highest opinion of my friend Col. John, I have known him for many years, I don't doubt his capacity, his honesty or his ability to prepare a much better code than we already have. I think that would be rather an easy job. But, gentlemen, can't you see the ridiculous side of this thing that this Bar Association is proposing to put itself on record for something in the form of laws for the State of Alabama, to govern its people for a period of twelve years, that we don't know what it is, or what it is about? Of all the pieces of childish nonsense that I have seen attempted to be pulled off—if you will excuse the expression—in this Bar Association, this reaches the climax. I have no doubt about the work; I have no doubt about the capacity and experience of the man; I am perfectly willing to endorse his effort, his good intentions, but this motion goes too far to endorse a code which has not yet been prepared.

Mr. Johnston:

Will you allow me to interrupt you? That is all that I intended to do, to endorse the action of this committee which requested Col. John to get up some kind of codification. I had no intention of requesting endorsement of the work, but of the fact that some one of his capacity had been secured to get it in shape for the Legislature when it meets, and that Col. John has been requested to do that.

Mr. Dixon:

With all due respect to the gentlemen, he had better say what he means; the resolution goes beyond that scope.

Mr. Johnston:

I am sorry that I cannot express myself as well as the gentlemen when he says he construes it differently.

Mr. Dixon:

May I ask Col. John under whom he is working?

Mr. John:

Myself, I am doing the work myself.

Mr. Johnston:

I thought that it was some organization of the State that he was working under.

Mr. F. S. White:

I think that all this matter can be satisfactorily settled by letting Mr. Johnston accept for the whole motion the amendment that I offered simply endorsing Col. John for the work.

Mr. Johnston:

I will accept that.

A Member:

I would suggest this, as Mr. Johnston has accepted Senator White's amendment as a substitute for his resolution, that will end the whole affair.

The President:

That has been done.

Mr. Callahan:

I wish to say, Mr. President—

Mr. F. S. White:

As Mr. Callahan has the floor, I will state my amendment: That the Bar Association endorses Col. John for the work of preparing in advance this codification.

A Member:

Does that mean we endorse the work?

Mr. F. S. White:

No. To make myself entirely plain, I am simply proposing to bet on a horse that I have never seen lose a race, I am simply proposing to ride the horse that has never stumbled while I have been riding him, and if I may further illustrate it, I will say, just putting a little ginger in the horse—sometimes they do that, you know.

Mr. Callahan:

This is to endorse Col. John. If this resolution is merely

to endorse Col. John for what he is about to try to do, I have no more to say.

Mr. Mulkey:

I would like to have the resolution written out, sent to the Secretary's desk and read.

Mr. F. S. White:

I will restate it:

'Resolved, That this Association endorse Col. Sam Will John as a suitable person to codify the laws of Alabama for consideration by the next Legislature.'

Resolution adopted.

Mr. Felix L. Smith:

There was a committee appointed last evening for the purpose of nominating officers. The Nominating Committee is now ready to make report.

The President:

The regular order of business provides for the election of officers as the last action of this meeting. We suspended the regular order for the purpose of nominating and electing a President.

Mr. Burr:

I move that the report be received; that the regular order be suspended and the report of the Nominating Committee received.

Motion adopted.

Mr. F. L. Smith:

Your committee beg leave to make the following report:

VICE-PRESIDENTS.

R. C. Hunt, Fort Payne.

R. T. Ervin, Mobile.

W. W. Callahan, Decatur.

J. W. Lapsley, Selma.

J. A. Carnley, Elba.

CENTRAL COUNCIL.

Z. T. Rudulph, Birmingham.
W. P. Acker, Anniston.
A. G. Smith, Birmingham.
W. C. Davis, Jasper.
H. R. Howze, Birmingham.

EXECUTIVE COMMITTEE.

Wm. M. Blakey, Montgomery.
Ormond Somerville, Tuscaloosa.
G. R. Harsh, Birmingham.
W. O. Mulkey, Geneva.
Alexander Troy, Ex. Off., Montgomery.

SECRETARY-TREASURER.

Alexander Troy.

I will state that as Mr. Hunt was one of the nominating committee his name was added over his objection; but the committee thought it proper to retain him as one of the Vice-Presidents. And as to the Secretary of the Association, we finally decided, after a good long controversy, to recommend the re-election of Col. Alex Troy, who is known to some of the members of this Association. (Laughter.)

I move the adoption of the report of the Nominating Committee, and that the Secretary be authorized to cast the entire vote of the Association for the gentlemen named.

Mr. Latady:

To relieve the Secretary of the embarrassing situation thrust upon him of casting a vote for his honorable self under the motion of the gentleman, will you not accept the amendment that the President be requested to cast that vote just to relieve the modest Secretary?

Mr. A. G. Smith:

I think I heard my name called as one of the members of the Central Council. I will ask the Association to excuse me from that work. I have been on the Central Council for the last year, and I have not had the opportunity of giving it as much time and attention as a man ought to give that kind of thing, and I would ask Mr. Smith, the Chairman, to suggest some one else in my place. I am willing, if the Association says so, to make some sacrifices, but at the same time it would be a pleasure to me to be relieved of the responsibility of the work; not that I am not disposed to do the work, but I am not as young as I was once.

Mr. Sims:

I rise merely to contradict what the gentleman says that he did not give thoroughly conscientious and persistent attention to his work during the past year. I have had the honor of being the Chairman of the Central Council for seven years, and during that time there has never been given more conscientious attention than that by Mr. A. G. Smith.

Mr. A. G. Smith:

That is what makes it onerous.

The President:

All in favor of the motion that the President be directed to cast the vote of the Association for the election of the officers nominated by the Nominating Committee will say Aye and those opposed No.

Motion adopted unanimously.

The President:

I take pleasure in casting the vote of the entire Association for the officers nominated by the committee for that purpose.

I will now call for the regular order of business, unless there are some more injected matters you want to have heard first. The next order of business left unfinished is the Report of the Committee on Legal Education and Ad-

mission to the Bar by the Chairman, Hugh Morrow, Esq.

Mr. Callahan:

What becomes of the unfinished business of yesterday morning when we adjourned?

The President:

That is what I am taking up right now.

Mr. Callahan:

What become of the reslution by Mr. Lewis?

The President:

Unless there is insistence on that being taken up, I think the regular order of business ought to be taken up; that was injected into the regular order; unless the Association insits we shall go back where we stopped yesterday. I will proceed with the order of yesterday and finish that, and then we will return to that other matter if the Association desires. I think we had better proceed in this way.

The Secretary:

Mr. Hugh Morrow, the chairman of that committee is not present, but the report has been sent to me, which I will now read if it be the pleasure of the Association.

The Secretary then read the report as follows:

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Alabama State Bar Association:

In fairness to your Committee on Legal Education and Admission to the Bar it is proper here to state that this is the report of the Chairman and not of your Committee. There has been no session of your Committee, and the members thereof are unavoidably absent from this annual meeting of the Bar Association.

A perusal of the reports of the various Committees on Legal Education and Admission to the Bar reveals a persistent recommendation that candidates for admission to the Bar be required to have, at least, a high school edu-

cation, and that they shall have had from two to three years' actual experience in the study of the law, either in a law school or in a lawyer's office. Apparently no effort has been made to carry into effect these recommendations.

The Chairman of your Committee, therefore, recommends that your Committee on Legislation prepare and present to the next Legislature a bill so amending the statutes on the subject as to provide:

(1) That no person shall be eligible to admission to the Alabama Bar, either through the University of Alabama, or through the State Board of Examiners, unless such person has spent three years in the study of the law and has had at least a high school education of four years.

In my happy moments, I am emboldened to believe that the enactment of the above recommendation into a law will tend to elevate the Bar, and redound in ultimate benefit to the public generally.

Respectfully submitted,
HUGH MORROW,
Chairman.

The President:

What is the wish of the Association with regard to that report?

A Member:

I move that the report be received and published in the proceedings.

Mr. Ino. H. Peach:

I believe the Association would make a mistake to change the rule allowing graduates from the University of Alabama their privilege. Every change has been the other way. More dependence is placed now upon work in colleges and universities than upon examinations. Anybody can cram on examination, but a university of standing will not give a man a certificate or diploma who is unfit to practice, and we ought to encourage rather than discourage that qualification of lawyers, that they have a

three years course from some law university, and I think we ought to recognize the State University, and graduates of the University of Alabama should be admitted without examination.

Mr. F. S. White.

I move that the report be laid upon the table.

Mr. O'Neal:

That will stop the debate.

Mr. F. S. White:

Perhaps it will. Is there a motion to receive the report?

The President:

Yes.

Mr. F. S. White:

That places it before the body.

The President:

That the report be received and filed and published in the proceedings.

Mr. F. S. White:

No motion to endorse it?

The President:

Yes, as a recommendation on the part of the Chairman of the Committee.

Mr. F. S. White:

I quite agree with my friend who has just spoken, that we should not now recommend, as an Association, that a graduate certified from the University should not practice law.

Mr. Peach:

I did not understand the report to have that meaning.

Mr. F. S. White:

It did; unless he had attended three years; if he is issued his degree he is entitled to admission. I think without regard to time if he gets his degree he is entitled to it.

Mr. F. S. White:

The President:

The Secretary will please read that portion of the report again.

The Secretary read the report.

Mr. F. S. White:

Aside from that, I do not believe that this Association should put itself on record as requiring an applicant to have attended a High School for four years. I do not believe that a bright, ambitious young man who meets all the requirements should be denied the privilege of a license to practice law simply because he has not attended a High School for four years. He may have failed to attend the last half of the fourth year; he may be just as competent, just as fit as the man who has attended the full course of four years, and yet, under that resolution, he would be denied the right to practice law. I do not believe in it.

Mr. Johnston:

I want to say this about Mr. Morrow and the University of Alabama. Mr. Morrow is a Trustee of the University, no one is more loyal to it and loves it more than Hugh Morrow. When he recommends that a three years course should be required it is because he knows that less than three years at any law school does not properly, in his opinion, equip a man to practice law. At the University we have tried and been anxious to put in the three year law course, and it would have been in already but for the fact that the University has not the funds to establish such a course there; and I am sure in making this recommendation he did not do anything that would hurt the University in any way.

Mr. F. S. White:

Was it not proposed to help the University rather than the applicant that the resolution was offered?

Mr. Johnston:

No, to elevate the tone of the Bar, because it has been said in this Bar Association time and again that the law that excepted the graduates from the law school of the University of Alabama from standing an examination, which is the law of Alabama, that the graduate from the

law school of the University does not have to stand an examination to be admitted to the Bar, it has been stated time and again that it was for the benefit of the University, to encourage young men to go there in order to get a diploma and get admitted without standing an examination. As I understand the question of whether the report be endorsed or not is not before this body, and I merely make this statement because Mr. Morrow is not present, and I am sure that he had not the intention suggested by Mr. Peach or Mr. White. I am sure that Mr. Morrow's idea is to elevate the members of the Bar, and believing that a three years course is necessary and proper in the law to equip young men, he recommends it notwithstanding this would debar a graduate of the University being admitted under present conditions, and notwithstanding that he would do anything to help the University of Alabama along.

Mr. F. S. White:

I feel that anything that the University would want has been taken care of by Mr. Morrow, but I am also satisfied in the taking care of the University he would strive primarily to take care of the interests of the people of Alabama.. I am reminded in that connection of the saying of one of the most celebrated men that Alabama ever produced, he was from Selma, in regard to a certain community, when he said that community had three damn fool lawyers to make business for the others. I expect that every lawyer here has run up against that kind of business, and has been pleased to receive it. Now, Mr. Chairman, his resolution is in the interest of teaching those who go out among the people before they use the knife they ought to be taught how to use it. This is not a high school education, but equal to three years study at the Bar. I am sure the gentlemen we saw use the tools in their profession yesterday, most of them had that much education or they could not use them. I fully agree with this resolution, and I wish that there was a motion endors-

ing it, and there seems to be some desire along that line, I do not move that this Association endorse the report of the Committee on Admission to the Bar.

Mr. J. Q. Smith:

I want to call your attention to that part of the resolution calling for four years in a high school and three years at the University, and I see a good many lawyers here, many pretty good lawyers, who have never been in a high school. Three years in the University will disqualify a good many people, and I move that that report be tabled.

Mr. Ivey:

I heartily endorse that part of the report requiring three years continuous law course by any applicant. That was a motion endorsed by Mr. Ballard, if you gentlemen who were present last year at Decatur will recall. Two years is not sufficient. There are some here who know I am not an alumnus of the University but of the examining board of Alabama after the third shot at it! Something has been said about graduates of the law school of the University. Alabama has also a medical school, and I say to you, gentlemen, that any young man having graduated from the law school of Alabama if he is not capable to take and pass such examination as is required by the Supreme Court of Alabama in order to get his license to practice, it is a reflection upon the University law school of Alabama. There are members here who have attended law schools outside of Alabama and then returned to Alabama and taken the course there. But if any one prefers to take a three year course in the State of Alabama then he should be required to take examination for admission to practice just as much as an applicant from the medical school of Alabama after he has completed a course there. Now, gentlemen, I think I know something about getting admitted to practice. I never had, and is the regret of my life, I never was inside of a schoolhouse in my life, except to pass in and out, I never was in school except when I was in the law school. I could not get my degree because

when I went to the University of Alabama and spent a short I did not have the elementary training which is required—Mr. Denny and other know that. I told him I never was in a schoolhouse, I did not get the advantage of the blue black speller, and as far as getting down to “indestructibility” I heard of it but I never saw it. You take a young man, give him a license, let him have had four years training in high school and if it is not in him to make a lawyer you will soon see him drifting into other channels.

A Member:

Look at the records Lord Bacon left, and he never was in a high school.

Mr. Ivey:

I know there is nothing personal in that; make the requirements as strong as you like for admission—make it three years at least, but if I conceive the construction placed on that report it is not the four years course but the training equivalent of four years course. I dare say there are men in this audience who have never received four years course in any school. It should be, gentlemen, if it is not in the motion, training equivalent to such a course in a high school.

A Voice:

What is a high school education?

Mr. Ivey:

He will find it out when he comes to be examined. If any graduate from the law school from the University of Alabama is not qualified to go before the board of examiners and take the examination, he is not entitled to a license; he would be a burden upon the citizenship of Alabama and the profession of law, and beyond that and most of all, it would be a reflection upon the University of Alabama to turn out and palm off on the profession men not competent to pass that examination.

Mr. F. S. White, Jr.:

I did not intend to make a speech this morning, but since that report has been offered I desire to state that

I am not in sympathy with a part of the report, and I say this as a high school graduate and as an alumnus of the University of Alabama. I think it is well enough for us lawyers, and a very fitting thing for us lawyers, to try to elevate the Bar in every way that we can. We should try to elevate the Bar not only on educational qualifications but in many other respects after being admitted to the Bar. I am not at all in sympathy with that part of the report which denies to any man the inalienable right to practice law if he is qualified to pass the examination for admission to the Bar. Many a man, perhaps the best lawyers in the State of Alabama today, have not framed upon their walls diplomas from the State University either from the academic or law department, and yet are as qualified in their profession as any alumnus of the University of Alabama. I say it would be utterly wrong for this Association to go on record as being willing to deprive the young man who has dared to follow behind us of the right to practice law if they can pass the examination entitling them to practice. We ought not to change the existing law, let it stay as it is, and let us leave well enough alone—particularly since all of us are now in, and let the other fellow have a chance when he comes along without putting up all the hedges we can.

Judge Ervin:

I am accredited to just after the war period, I was born about war time. I had a common school education and went to Mobile and studied law under Judge Clarke. I was examined for admission in open court, there were two of us. The old gentleman delivered to us a lecture. He told us that he wanted us to remember that he was licensing us more to study law than to practice law. After practicing law some five or six years I went to the University of Alabama, and I am as loyal to the University as those who went through the academic department as well. I have heard something about wreckage here. If you will show me an educated lawyer of a University or any other

school and the graduate of a law school who is not fitted to practice and did not leave wreckage because he did not have the legal brain then I am willing to admit that the man who did not have the school education will leave a wreckage that the other did not leave. I never saw wreckage confined to one class. It was from the man who did not have the peculiar mind necessary to practice law. Some of the best lawyers I have practiced against were men who picked up what education they could, who had the legal brain, and they made the other fellow leave the wreckage. It does seem to me we make a mistake if we undertake to put prerequisites upon permission to practice law which makes it burdensome for the man who has the brain and capacity to fit himself for the practice—I think we would make a mistake.

Mr. Wilkinson:

I desire to dissent from some of the views expressed. I am a graduate of the University of Alabama and attended a high school about two years. I am in favor of requiring three years course of legal study either at the University or law office where it fits a man to pass examination. I think in addition to that he should have the equivalent of a high school education. While educated or uneducated lawyers will leave wreckage, as has been reverted to here, the probabilities are that the man with the trained mind will stand less chance of leaving wreckage.

I attended high school two years and I graduated from the University of Alabama and hold a diploma from that institution, and I am loyal to it, but I do know as a matter of practical experience that men have gone to the University and graduated from that law department, gone out into the practice of law, but were no more fitted by general training to practice law than the men who never saw a law school. I say that ought to be stopped; I say that a man should have at least the equivalent of a high school education and three year law course.

Mr. Johnston :

I was about to state that I do not understand how Mr. Wilkinson got into the University unless he had the equivalent of a high school education, the standard is a Class A. rating and it is the intention to continue to do so; they require the equivalent of a high school education.

Mr. J. Q. Smith:

What is the equivalent of a high school education?

Mr. Johnston:

It is the equivalent of a certain number of units at a primary school, at a graded or high school. It is not necessary that they should have attended a school for a given number of years. If a man has the equivalent it is not necessary that he should have burned up the oil, serving his terms between the graded and high schools, but he must have had a certain standard of education. I don't know of a university that teaches law that permits a man to come in there without their equivalent. This vague term should be ironed out of the report. Perhaps the suggestion that it be received and filed and remain on the fence where it has been for ten years would be best.

A Voice:

Why not get rid of it?

Mr. Johnston:

We want a specific bill before the Legislature whether the University shall admit as at present, or a horizontal method requiring reasonable acquaintance with educational facts and the history of our country. It is one of the criterions we must meet now, that a man have a reasonable education before being admitted to the practice. My motion is that the report be received and filed, with direction to the Committee on Legal Education and Admission to the Bar to prepare a bill for presentation to the next meeting of this Association for its consideration.

Mr. Sims:

The Central Council were encroaching, to a certain extent on this committee merely because they recommended

some such bill be drawn to heal the ethics of the profession.

Mr. Johnston:

To draw a bill and report it to the next annual session of this Association, in order that this Association will have before it a concrete specific suggestion along the lines not necessarily of this report and the report of the Central Council read by Mr. Sims.

The President:

It will be a new committee?

Mr. Johnston:

Yes.

Mr. Mulkey:

Motion having been made to table the report, the subject is not debateable.

The President:

It can be permanently withdrawn by consent of the movant and the consent of the Association.

Mr. Johnston:

I understood it had been withdrawn. I have made my motion which I trust the Association will adopt; we must reach a termination of this question one time or another.

Judge Weakley:

It seems to me that it should be left to the Committee on Admission to the Bar to make a report to this Association with a bill drafted that would embody qualifications.

Mr. Johnston:

I will accept that if the gentleman will withdraw his motion to table.

Mr. J. Q. Smith:

I want to have a vote on the question of tabling the report; I want some action by the Association.

Mr. W. S. Smith:

As I understand the report of Mr. Morrow, this is a mere recommendation. I want to say, gentlemen, that personally I prefer this recommendation. I believe that

the Bar of Alabama believes now in having an educated Bar. It is true, gentlemen, that many great legal lights of this state and of other countries have been denied the privilege of an education. One of the greatest lawyers that Alabama ever produced, Senator John T. Morgan, who was admitted in early life to the Talladega Bar, received no school education. I have heard that great lawyer say, who won international reputation, a man who reflected great honor upon the State of Alabama and upon the nation, that the only education that he received was at his mothers knee, that the only books he studied were the Bible and Shakespeare and Young's Night Thoughts, but notwithstanding that, gentlemen of this Association, I believe the time has come when the lawyers of Alabama should take an advanced step on this matter. I believe the time has come when we should recommend that the lawyers of this State should be educated in the schools, if possible. But, Mr. President, and gentlemen of this Association, I would not make it a rigid rule that one should be required to attend a high school for four years, or that he should attend the University for three years, or that he should attend the University at all. If he possesses the legal learning that is necessary whether or not he has ever attended any school he should be admitted to the Bar. Yet, gentlemen, as I understand this report, it merely recommends that the lawyers of Alabama should attend a high school for four years and that he should have three years training or three years study of law. Gentlemen, there is nothing wrong in that, in a recommendation of that character. If Alabama is to take the high position that she should take, and that other great States are taking, it is nothing but meet and proper that we should recommend a high standard for admission to the Bar in this State.

The President:

I would like to make a statement myself. I have some thoughts on this subject similar to that of some other mem-

bers of the Bar. Personally I had no high school education, and I studied law under rather difficult conditions. I read in a lawyer's office in the Mississippi bottom and was admitted to the Bar there, and what little ability I have, I think I had the equivalent of a high school education at the time I was admitted to the Bar, that is, I would have been qualified to pass the examination, which is understood to be 14 units—I believe that is the present standard, it used to be 12. Some ask the question what is the equivalent of it? Having been connected recently with the schools of the State, I can give a general idea of what the 14 units would consist of: A certain qualification in the English branches—being able to read and write, a certain amount of reading, that constitutes 4 units; then a certain number of units accorded for being able to do certain sums in arithmetic, arithmetic up to a certain standard gives you a certain number of units; and then the study of science gives you a certain number of units; the study of geography gives you a certain number of units; the study of a modern language gives you a certain number of units, making the 12 or 14 units. I make this frank statement, which seems doubtless like a confessional. But everybody wants to know if we are graduates of a university, or not? I think these times make for better education than formerly. Lawyers are expected to help courts and clients, and the matter of education is of concern to the lawyers. I do not know that we should go to the extent that this report proposes. I just asked your permission to make this statement, and as the previous question is called for, I will now put it.

The motion before the Association is to table the report.

Mr. O'Neal:

I want to have the report of Mr. Morrow read again.

The Secretary again read the report.

Mr. Johnston:

My suggestion is that the Committee prepare a bill and submit back to this Association.

Mr. Callahan:

I rise to a point of order. It strikes me, under parliamentary proceedings, you have to get rid of Mr. Johnston's substitute.

The President:

The motion to table was made before the substitute was offered.

Mr. Callahan:

It was withdrawn.

The President:

Only temporarily withdrawn.

Mr. Callahan:

Can we go back between the substitute and the motion?

The President:

It is already back.

Motion to table the report put by the President.

The chair announced after hearing the vote that he was in doubt.

Division called for.

Mr. Smith:

If this is not tabled then the substitute could be voted on?

The President:

Motion to substitute would then be in order.

The President:

The Secretary reports the result of the ballot as follows: Ayes, 28; Nays, 44. The motion to table rejected.

Mr. Johnston:

I move that this report be received and filed with directions to the incoming committee on Legal Education and Admission to the Bar, to prepare a bill fixing the qualifications for admission to the Bar of Alabama for submission to the next annual session of this Association.

Motion adopted.

The President:

The next order of business is the Report of the Committee on Correspondence by the Chairman, H. E. Gipson, Esq.

Mr. Gipson:

I tried to get the members of this Committee to give me some suggestions in the line of a report. We live so far apart that the suggestion was not followed. It is proper to say that this report is by the Chairman of the Committee, and not of the Committee. There are a number of things I notice by referring back to reports that have been hammered on for years by this Committee, and I have tried to take up one thing only, and I hope the members of this Association will agree with me that this is one thing of sufficient importance to work on, and we can have it accomplished in a measure at least, because they have it in States adjoining us. Or if we can succeed in getting the American Bar Association interested in it would help some. I refer to the question of divorce in the different States. I was very much surprised when I examined in the limited time I had to work on this report, the various grounds of divorce in the different States. I was unable to find two States that agreed entirely on the grounds to be assigned for a decree of divorce. So I have made the report on that question alone, and I will now read it.

REPORT OF COMMITTEE ON CORRESPONENCE.

To the Alabama State Bar Association:

Your committee through its chairman, would make the following report:

Of the many laws now in process of working out by the American Bar Association, and the several State Bar Associations, there is none of more vital importance to the American people than the Divorce Laws. Without an examination of the statutes of the several States, it is deemed safe to state that not any two States have substantially

the same laws as to the grounds for divorce. It therefore needs no argument to support the proposition: That all States of the American Union should have Uniform Laws as to the grounds, and service of process on the adverse party, to secure a divorce.

Your Committee therefore offers the following resolutions:

Resolved, That the delegates from the Alabama State Bar Association to the American Bar Association be, and they are hereby instructed and directed to do all in their power at the next meeting of the American Bar Association, take up the work and accomplish the fact of Uniform Divorce Laws in the several States of the Union as speedily as is possible.

Resolved further, That the said delegates to the American Bar Association, and they are hereby required, to make a report on this matter together with any suggestions the delegates may deem wise to the next meeting of the Alabama State Bar Association.

H. E. GIPSON, Chairman.

Mr. Dixon:

I move that the report of the committee be received and filed.

Motion adopted.

The President:

The next order of business is the Report of the Special Committee on Violation of the Code of Ethics and Law by Attorneys by the Chairman, Hon. B. P. Crum.

Mr. H. R. Howze:

Judge Crum had to leave the city this morning, and, as the next member of the committee, he asked me to make the report. There were three matters referred to us during the month of June for investigation. Two of them appeared rather frivolous, the other one requires more time as it is more serious, probably will require two or three months more time. We have three cases under investigation, and will have a full report at the next meeting.

The President:

The next order of business will be Memorial Sketches of deceased members by Dr. Thos. M. Owen.

The Secretary:

The Memorial Sketches, I am satisfied, will be filed with the Secretary; and I move that they be printed in the proceedings on this meeting.

Motion adopted.

Mr. Stokely:

Some of our younger members have shown their patriotism in a practical way by joining the fighting forces of the Government at this time, and as a recognition of that fact I desire to offer the following resolution:

RESOLVED, That the dues of all members of the Association who have heretofore, or may hereafter join the army or navy of the United States during the present war be suspended so long as such members remain in the army or navy.

I move the adoption of that resolution.

Mr. F. S. White:

I do not think that resolution goes quite far enough. I think we certainly ought to suspend their dues and I think we ought to commend their patriotism and courage.

Mr. Stokely:

I will accept that amendment to the resolution.

The President.

Don't you mean to remit the dues?

Mr. F. S. White:

I like the word "remit" in that connection.

Mr. Stokely:

Two or three members have already paid; therefore, the money should be sent back to them.

Mr. F. S. White:

Do anything or say anything that will do justice to the brave young fellows. They are offering up their success

in the profession, their hopes for the future, they offer up themselves to suffer, to endure, to bleed and die for their country. The legal profession has never been behind since the country called upon its citizenship to discharge these important duties, to undergo this sacrifice, and these young men have proven to the world what our profession has always done, and I am very proud of them, and I commend this resolution with all the emphasis that possibly can be given to it.

Resolution unanimously adopted.

Mr. Burr:

There was a matter mentioned by Mr. Sims this morning. I don't know how many had the opportunity of reading the bill suggested by the Mississippi Association, but that law has some splendid features and some constructive measures in it that ought to be brought to the attention of this Association.

Therefore, I move that our President appoint a Committee of three members to investigate that law and report at our next meeting with reference to it.

I might say that that law is not the product of the Mississippi Bar Association, but prepared by a committee of distinguished lawyers. It affords some splendid opportunities to put the shoe on the other fellow's foot, as it provides for qualifications of judges, etc.

Mr. Johnston:

Will you accept a substitute in order that it may get before the members of the Bar Association: That the Mississippi Bill be given the dignity of being printed in the proceedings, without arguments, so the entire membership may read it?

Mr. Burr:

Yes, that the Mississippi law be printed in the proceedings, and be considered in connection with other laws, and report back at our next meeting.

Mr. Sims:

In 1911 or 1912 a gentleman of wealth in Michigan be-

came so interested in judicial reform that he endowed a trust for the purpose of investigating judicial reform through a standing committee of directors, Harry Olson was chairman. That committee has been at work in preparing, as nearly as possible, an ideal bill for court procedure in America. That bill has been prepared and can be gotten by any gentleman interested by writing to the American Judicature Society in Chicago. The Mississippi Committee was the first to adopt that law. It was done cheffy as the work of the present Chief Justice of the Supreme Court of Mississippi. I would be glad to write to him for an exact copy from the original act. I am not objecting to, but supporting Mr. Burr's motion.

Mr. Burr:

I now move that our Secretary be requested to obtain the Mississippi law and print it in our proceedings for the information of our members, and that a committee of three be appointed by the President for the purpose of investigating that proposed law, as well as proposed similar laws, and report to our next meeting a proposed bill.

The President:

Wouldn't that properly go before the Committee of Judicial Procedure?

Mr. Burr:

I was suggesting a special committee.

Motion adopted.

(See Appendix.)

Mr. Hunt:

The worthy Secretary of our Association needs no encomiums from any member of the Association; we are all familiar with his long service and his work as Secretary of this Association. I therefore move, sir, that our Secretary attend the American Bar Association at the expense of this Association.

Motion adopted.

Mr. W. S. Smith:

I want to offer a resolution which is born of a certain discussion that occurred, and the resolution is this:

“RESOLVED: That the Committee on Legislation be instructed to prepare a bill to be submitted to the next Legislature of Alabama, requiring that all general laws be printed and placed upon the desks of Senators and Members of the House.”

Mr. President, some gentleman remarked in the rear that he thought that was already provided for, but such is not the case. The instance that has been brought to our attention has prevented the Supreme Court from performing a duty. Some member of the Legislature offered what my good friend Col. John terms an assenine amendment. Gentlemen, that is frequently done. In the Congress of the United States, the members of the Senate and Members of the House respectively have deposited on their desks copies of the laws which are before those Houses for consideration. I know that in some instances important bills, bills that are deemed important, that by special resolution those bills are printed and placed on the desks of our members of the House and Senate, but gentlemen we have had brought to our attention during this session a law that was no doubt deemed of no very great importance, and that law was completely emasculated by an amendment, and I believe that was because members of the House and Senate knew not on what they were voting. The expense, I believe, would be small in comparison to the other great saving to our State, and for that reason I offer the resolution, and move its adoption.

Mr. Dominick:

I move that the resolution be tabled.

Motion to table adopted.

The President:

I was directed by the Association to appoint members

on certain committees. I was directed to appoint two members on a committee to prepare a bill to be submitted at the next meeting of this Association, called the Workman's Compensation Act. The committee appointed last year consisted of Messrs. John, Whiteside and Cooper. I add to that committee Messrs. J. T. Stokely and C. P. Beddow, making five members instead of three members of that committee.

The Committee on Land Titles and Registration, etc.; I don't know whether these appointments are final or not, but if I have the power I will appoint Messrs. Henry R. Howze, of Birmingham; H. A. Bradshaw of Florence; Geo. M. Marks, of Montgomery; E. W. Faith, of Mobile; and Chambliss Keith, of Selma, as that committee.

Mr. Troy:

Mr. President and Gentlemen of the Association: I ask your indulgence just for a moment. I again appear before you to thank you sincerely for the compliment you paid me in re-electing me as Secretary, and for the vote cast a few minutes ago sending me as a delegate to the American Bar Association. I do not think it probable that I will go, but I thank you nevertheless. I might quote from the speech of my distinguished friend Judge Nathan in accepting the office of President at the last meeting with reference to this election of Secretary—I had no idea that it would come to me; it was an unexpected honor, one that I did not anticipate, and besides that I had set aside the evening to write my speech of acceptance! It seems, gentlemen, since coming from North Carolina some few years ago, that I have not altogether lost caste, and still have maintained some evidences of character. It is said that a witness in a case being examined in the United States Court in North Carolina was asked by the District Attorney: "Do you know the character of this Defendant?" "Yes." "What is it?" asked the District Attorney. "It is good," said the witness. "Don't you know that he has been convicted of sheep stealing?" "Yes."

"Don't you know he has been convicted of wife beating?" "Yes." "Then how can you say that he is a man of good character?" He said: "Why, Judge, a man has to do a heap worse things than that in western North Carolina before he loses his character!" I am glad, gentlemen, that I have not lost my character.

The President:

I think we would be remiss if we did not say anything before we adjourned or recessed until after dinner, in appreciation of the splendid treatment we have received at the hands of the Bar Association of Birmingham in our visit here. The Association, certainly in my experience yet, never had a larger attendance than we have had throughout our meetings here. I want to congratulate the Executive Committee for having selected this city for our session; I have enjoyed every moment of it, and I believe every member enjoyed it, and I hope it will not be long before we come back here to another annual meeting. I would be glad if some member a non-resident of Birmingham, would offer a resolution along that line.

Mr. W. H. Mitchell:

I move that the thanks of this Association be extended through the Secretary to the Birmingham Bar Association for the really enjoyable entertainment offered to this Association. I think it would be entirely proper that we demonstrate our appreciation and thanks by a rising vote to those who have been so active in accomplishing such splendid results in our behalf.

Motion adopted by rising vote.

On motion the Association then recessed for dinner.

AFTERNOON SESSION

The Association met at 2:30 P. M., pursuant to adjournment, the President presiding.

The President:

So far as the program outlined by the Executive Com-

mittee, we have completed all of the matters that were submitted to this Association. The chair is ready to obey the wishes of the Association. Unless some member has something else he desires to bring before us, I will adjourn this Association sine die.

Mr. C. P. Beddow:

In passing votes of thanks we have overlooked one important matter connected with the State Bar Association, and I want to introduce a resolution: That a vote of thanks be extended to the retiring President of this Association, Hon. Joseph H. Nathan, for the attention and interest he has manifested in this Association, and our appreciation of the splendid officer he has made during the year that he has been President of this Association. I will call on the Secretary to put that resolution to the meeting.

The Secretary:

You have heard the resolution introduced by Mr. Beddow, that the thanks of this Association be tendered to Hon. Joseph H. Nathan for his able administration to the affairs of the Association and for his courtesy and uniform kindness to the members of the Association. All in favor of that resolution will rise.

The Secretary:

The resolution is unanimously adopted by a rising vote; it is not necessary to put the other side of the question.

Judge Nathan:

Gentlemen of the Association: When you elected me President of this Association you honored me far beyond my deserts—but the fact that I have conducted myself in a way quite to your satisfaction is a tribute not only to your good judgment when you elected me. I thank you very sincerely for the kind expression. I want to say to you that I have enjoyed this meeting, every instant of it, even when at one time during its proceedings I sat on the platform and went to sleep a part of the time, and I enjoyed that too.

Mr. Johnston:

I want to offer a resolution: Be it resolved: That the Alabama State Bar Association hereby recommends the calling of a Constitutional Convention to formulate a new organic law for the State of Alabama.

Resolution seconded and adopted.

On motion the Association adjourned sine die.

NECROLOGY OF THE ALABAMA STATE BAR ASSOCIATION, 1916-1917.

By THOMAS M. OWEN, LL. D., Director,
Department of Archives and History.

HOWELL ROSE GOLSON was the first on the death roll of the Association for the year. He lost his life in an automobile accident, Thursday, September 21, 1916. With a number of friends he was returning from Montgomery, when the car became unmanageable and turned turtle, killing Mr. Golson and injuring the others of the party. Mr. Golson was born in Lowndes County, Ala., January 22, 1857, and was the son of John and Lucinda (Knight) Golson, of that county.

He received only a limited education in the country schools of Lowndes County, but by close application and reading he enlarged his mental equipment, thus more than compensating for the loss of larger opportunity. He read law under the late Willis Brewer, Esq., of Hayneville, and came to the bar in 1890. He later located in Wetumpka, where he practiced law until his death. He never held public office, but always took a lively interest in civic affairs. About 1900 he became the proprietor of the Wetumpka Weekly Herald. This paper continues in the family, and is now edited by his daughter, Miss Frances Golson. He was twice married: (1) on February 13, 1879, to Korrie Goldsmith; and (2) on October 6, 1887, to Bama Goldsmith, sister of the first wife. They were daughters of Rev. A. F. Goldsmith, and sisters of R. L. Goldsmith, Esq., both of Lowndes County. Three children, Frances, John F., and Howell H., by the first wife, and two, Florence and Henry G., by the second wife, survive the father.

GEORGE PRESLEY JONES, of Florence, passed away December 5, 1916, at his home on Wood avenue in that city. He had for some time had a heart affection, which finally brought about his death. He was born near Rus-

sellville, Ala., January 11, 1850. His father was the distinguished Henry Cox Jones, long a leading figure in Alabama public life, and at one time a member of the Confederate Provisional Congress; and his mother, Martha L. Keyes, was a sister of Hon. Wade Keyes, and the granddaughter of John Wade Keyes, a Revolutionary soldier.

Mr. Jones was educated at Florence. He was prepared for the bar by Chancellor Keyes; and was admitted in 1871. He spent a few months in the office of the late Col. Josiah Patterson, but in the latter part of 1872 he opened his own office for the practice of his profession. In 1885 he formed a partnership with the late Judge R. T. Simpson, which continued for some years. While always active in the practice, he took an intelligent interest in business and civic affairs. In 1887 he was chosen president of the board of trustees of the Florence State Normal College, a position he filled with great satisfaction to the friends of that institution. Mr. Jones was a member of the First Methodist Church at Florence, and a member of the Knights of Pythias. His wife was Miss Mary Bliss. She and one son, George Bliss Jones, survive him.

JOHN PELHAM, Presiding Judge of the State Court of Appeals, died at Montgomery, after a surgical operation, March 5, 1917. He was born August 23, 1865, at Alexandria, Calhoun County, and was the son of Judge Charles and Margaret Louise (Johnston) Pelham, and the grandson of Dr. Atkinson and Martha (McGhee) Pelham, and of Judge George and Margaret (Talmadge) Johnston, the latter of Louisville, Ky.

Judge Charles Pelham was a member of Congress from Alabama in 1871, and the brother of "the gallant" John Pelham, so distinguished in the War of Secession. Dr. Pelham came from Kentucky to Alabama in 1837, while his wife's family came from Person County, N. C., to Calhoun (then Benton) County about 1832.

Judge Pelham was educated at the Presbyterian school in Talladega, Ala.; and in 1888 graduated from the law de-

partment of the Columbian University (now George Washington University), Washington, D. C., with the degree of LL. B. and LL. M. Admitted to the bar in 1888, he practiced continuously at Anniston until elected Judge of the seventh judicial circuit in 1904. On March 9, 1911, he was named as an associate judge of the then newly created Alabama Court of Appeals for a term of six years; and upon the resignation of Judge Richard W. Walker, he succeeded to the position of presiding judge by virtue of the statute creating the Court. At Max Meadows, Va., Oct. 10, 1895, he married Ellen, daughter of George W. and Rebecca (Austin) Miles, of Marion, Va. No children. In the death of Judge Pelham the State lost one of its most courageous and patriotic citizens, and the legal profession one of its brightest ornaments.

WALKER PERCY died at his home in Birmingham, February 8, 1917. He had been in irregular health for some time. He was born November 18, 1864, in Washington County, Miss., and was the son of William Alexander and Nannie (Armstrong) Percy, the former of Huntsville, Ala., afterwards of Greenville, Miss., and the latter of Tennessee; and the grandson of Thomas G. Percy, and his wife, a Miss Pope, both of Huntsville, Madison County, Ala.; and of William Armstrong.

The Percys were of English, the Armstrongs of Scotch descent. Charles Percy came from England and settled at Natchez while it was a portion of the Spanish province of Louisiana. His son Thomas G. Percy, attended Princeton University and later married a daughter of Col. Pope and settled at Huntsville, Ala. William Armstrong had charge of Indian affairs under Jackson's administration.

Walker Percy's preparatory education was received under William Greene in a Private school in Greenville, Miss. He graduated as Master of Arts from Sewanee University in the summer of 1883; and also took a medal in Latin and Greek and received a medal in debating society. He graduated in 1885 from the University of Virginia, with

the degree of Bachelor of Laws. He began practicing law at Birmingham in 1885 and had practiced there continuously since. In 1911 he served as one of the Representatives in the Legislature from Jefferson County. He had a large and lucrative practice; and at the time of his death was senior member of the firm of Percy, Benners and Burr. He was a Democrat; and an Episcopalian.

He married at Birmingham, Ala., April 17, 1888, Mary Pratt De Bardelaben, the daughter of Henry F. and Ellen (Pratt) De Bardeleben, of Birmingham. Her grandfather, Daniel Pratt, who came from New Hampshire, was the founder of Prattville, building his cotton mills and gin factory there in 1840. Her father was of German descent, the correct family name being Von Bardeleben. Her great-grandfather was Arthur Franz Ferdinand Von Bardeleben, a German officer who settled in South Carolina, a native of Cattenburch, Germany, in 1750. Mrs. Percy, one son Leroy Percy, and one daughter, Mrs. Matthew Murphy, survive.

WILLIAM LLEWELLEN PITTS belonged to the group of younger men, into whose hands affairs of State are gradually passing. In 1915 he had been appointed Probate Judge of Perry County, Ala., and he had not been in office two years when he was called away, February 7, 1917. He was a native of Uniontown, where he was born August 31, 1872. His parents were William L. and Mattie Llewellyn (Blevins) Pitts, of Perry County, the father being a prominent planter of that county.

Judge Pitts was educated in Uniontown, Cedar Grove Academy, and the Marion Military Institute. After preparation for the law in the offices of Pitts and Pitts in Selma, he was admitted to practice, and located at Uniontown. He was 14 years chairman of the Democratic Executive Committee of Perry County; 4 years a member of the State Executive Committee; declined appointment to the Court of Appeals in 1914; Captain of Co. M., 2nd Alabama Volunteer Infantry, Spanish-American War; Assistant Ad-

jutant General, A. N. G., for past 8 years; and a member of the K. of P., the Elks, and the Presbyterian Church. On June 4, 1900, he was married to Miss Mattie Lea Harwood. They have one son, Llewellen Pitts.

EDWARD SEABROOKE WATTS, like Mr. Golson, died as the result of an automobile accident. On Saturday afternoon the car in which he was driving, turned over, pinning him under the machine. He never regained consciousness, but passed away at St. Margaret's hospital, Montgomery, about 11 o'clock p. m., October 7, 1916. Mr. Watts was of historic stock. His father was Thomas H. Watts, Jr., a lawyer late of Montgomery; and his mother was Miss Johnness Bealle Eddins, of the prominent family of that name in Tuscaloosa. His grandfather was Alabama's second War Governor, Thomas Hill Watts. Gov. Watts was a lawyer of distinction. He was the Colonel of the 17th Alabama Infantry Regiment, and later Attorney General of the Confederacy. Thomas H. Watts, Jr., was a member of the Alabama Constitutional Convention of 1901.

Mr. E. S. Watts was a native of Montgomery, born June 5, 1882. He was educated in the schools of the city. He took a law course at the University of Alabama, and at the Columbia Law School. He was admitted to the bar in 1904. From that date until his death he continued the practice with the following professional connections: Watts and Son 1905, Watts and Letcher for two years, Troy, Watts and Letcher until 1910, and from 1910 to the death of Judge J. M. Chilton in 1916, he was associated with that excellent lawyer. Mr. Watts was attorney for Montgomery County from 1908 to 1911. In 1913 he was elected city attorney of Montgomery, serving until the change of administration in 1915. His wife was Virginia Tyson, daughter of Senator Joseph Norwood, to whom he was married November 4, 1908. He had one child, Edward S. Watts, Jr.

OFFICERS OF THE ASSOCIATION

1917-1918.

PRESIDENT:

HENRY UPSON SIMS, Birmingham.

VICE-PRESIDENTS:

**R. C. Hunt, Fort Payne
R. T. Ervin, Mobile.
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ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

E. Perry Thomas, Chairman -----Montgomery
A. M. Garber -----Birmingham
O. L. Lewis -----Dothan
Thos. J. Judge -----Birmingham
Val. J. Nesbit -----Birmingham

ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

Forney Johnston, Chairman -----Birmingham
E. D. Smith -----Birmingham
J. K. Dixon -----Talladega
A. Latady -----Birmingham
Jas. A. Mitchell -----Livingston

ON CORRESPONDENCE.

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Geo. A. Sorrell -----Alexander City
A. M. McDowell -----Eufaula

ON LEGISLATION.

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Paine Denson	Cullman
G. H. Kruempel	Mobile
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ON VIOLATIONS OF ETHICS AND LAW BY
ATTORNEYS.

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Borden Burr, Chairman	Birmingham
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ON WORKMAN'S COMPENSATION BILL.

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Carmichael, C. D. -----	Geneva
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Davis, W. C.	Jasper
de Graffenreid, Edw.	Tuscaloosa
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Denson, John V.	Opelika
Denson, N. D.	Opelika
Denson, N. D. Jr.	Opelika
Denson, Paine	Cullman
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 Garber, J. B. -----Birmingham
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 Gibson, White A. -----Birmingham
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 Grayson, David A. -----Huntsville
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 Griffith, A. A. -----Cullman
 Grubb, W. I. -----Birmingham
 Gunn, Norman -----Jasper
 Gunter, Gaston -----Montgomery
 Gunter, W. A. -----Montgomery

Hail, J. C. -----Birmingham
 Haley, L. J. -----Birmingham

*Deceased.

Hamill, E. N. -----	Birmingham
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Hanby, Jas. M. -----	Birmingham
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Harrison, W. B. -----	Talladega
Harsh, G. R. -----	Birmingham
Harwood, Bernard -----	Tuscaloosa
Hawkins, Wm. -----	Eutaw
Heflin, H. P. -----	Birmingham
Hill, Walton H. -----	Montgomery
Holloway, J. L. -----	Montgomery
Houghton, H. S. -----	Montgomery
Howze, A. C. -----	Birmingham
Howze, H. R. -----	Birmingham
Huddleston, Geo. -----	Birmingham
Hunt, Luke P. -----	Birmingham
Hunt, R. C. -----	Fort Payne
Inge, Francis J. -----	Mobile
Inge, Z. M. P. -----	Mobile
Ivey, J. B. -----	Birmingham
Jackson, J. K. -----	Birmingham
Jeffries, L. E. -----	Washington, D. C.
John, Sam Will -----	Selma
Johnston, Forney -----	Birmingham
Johnston, R. D. Jr. -----	Birmingham
*Jones, Geo. P. -----	Florence
Jones, Geo. W. -----	Montgomery
Jones, J. B. -----	Montgomery
Jones, Jno. Paul -----	Montgomery
Jones, R. Alston -----	Montgomery
Judge, Thos. J. -----	Birmingham
Keith, Chambliss -----	Selma
Kidd, J. M. -----	Birmingham
Kirk, J. T. -----	Tuscumbia

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Knox, Jno. B. -----	Anniston
Kruempel, G. H. -----	Mobile
Lamar, Theo. J. -----	Bessemer
Lane, L. M. -----	Greenville
Lanier, M. H. -----	Huntsville
Lapsley, Jno. W. -----	Selma
Latady, A. -----	Birmingham
Latady, Francis B. -----	Birmingham
Lavender, W. W. -----	Centreville
Leadbeater, L. C. -----	Birmingham
Leader, Benj. -----	Birmingham
Lee, Lawrence H. -----	Montgomery
Leeper, J. T. -----	Columbiana
Leigh, N. R. Jr.-----	Mobile
Lewis, Ivey F. -----	Birmingham
Lewis, O. S. -----	Dothan
Ligon, R. F. -----	Montgomery
London, John -----	Birmingham
Lowe, F. M. -----	Birmingham
Lull, Frank W. -----	Wetumpka
Lyman, E. S. -----	Montevallo
Lynne, S. A. -----	Decatur
McAdory, Wallace -----	Birmingham
McArthur, F. D. -----	Birmingham
McCarthy, F. W. -----	Birmingham
McCrossin, Wm. P. -----	Birmingham
McDaniel, Henry -----	Demopolis
McDowell, A. M. -----	Eufaula
McDowell, C. S. Jr.-----	Eufaula
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Mackenzie, Stuart -----	Montgomery
McKinley, John -----	Eutaw
McMillan, B. F. Jr.-----	Mobile
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McQueen, J. D. -----	Tuscaloosa

Mallory, Hugh	-----	Selma
Mallory, H. S. D.	-----	Selma
Mangum, R. H.	-----	Selma
Marks, Geo. M.	-----	Montgomery
Martin, Henry J.	-----	Birmingham
Martin, Thos. W.	-----	Birmingham
Martin, W. L.	-----	Montgomery
Mayfield, J. J.	-----	Tuscaloosa
Mayhall, W. V.	-----	Haleyville
Merrill, A. H.	-----	Eufaula
Mertins, G. F.	-----	Montgomery
Middleton, J. O.	-----	Clanton
Miller, Jno. H.	-----	Birmingham
Miller, J. M.	-----	Gadsden
Mitchell, Jas. A.	-----	Livingston
Mitchell, W. H.	-----	Florence
Moore, Fred. G.	-----	Birmingham
Morrow, Hugh	-----	Birmingham
Moseley, L. M.	-----	Union Springs
Mudd, J. P.	-----	Birmingham
Mulkey, W. O.	-----	Geneva
Murphree, T. A.	-----	Birmingham
Nathan, Jos. H.	-----	Sheffield
Nelson, Geo. A.	-----	Albany
Nesbit, Val. J.	-----	Birmingham
Nesmith, C. C.	-----	Birmingham
Nolan, J. W.	-----	Alexander City
Oates, Wm. C.	-----	Montgomery
Oberdorfer, A. Leo	-----	Birmingham
O'Neal, Emmet	-----	Florence
Owen, Thos. M.	-----	Montgomery
Pace, A. E.	-----	Dothan
Palmer, T. W. Jr.	-----	Birmingham
Parker, Geo. H.	-----	Cullman

Patterson, T. M.	Clayton
Patton, J. W.	Birmingham
Patton, R. B.	Livingston
Patton, W. W.	Livingston
Peach, Geo. W.	Clayton
Peach, Jno. H.	Sheffield
*Pelham, John	Anniston
Pennington, J. M.	Jasper
Percy, LeRoy P.	Birmingham
*Percy Walker	Birmingham
Pettus, Erle	Birmingham
Pillans, Harry	Mobile
Pillans, Palmer	Mobile
Pitts, Alex D.	Selma
Pitts, Arthur M.	Selma
Pitts, P. H.	Selma
*Pitts, W. L.	Uniontown
Pope, J. D.	Birmingham
Powell, D. M.	Greenville
Prince, Carroll T.	Mobile
Prince, Sidney R.	Mobile
Pruet, J. J.	Ashland
Pugh, Jno. C.	Birmingham
Quinn, Ralph W.	Birmingham
Rankin, Jas. G.	Athens
Ray, Jas. J.	Jasper
Reese, H. F.	Selma
Reynolds, Grady	Clanton
Rice, Fleetwood	Tuscaloosa
Rickarby, Elliott G.	Mobile
Riddle, D. H.	Talladega
Riley, J. E. Z.	Ozark
Ritter, Claude D.	Birmingham
Rives, Richard T.	Montgomery

*Deceased.

Rudulph, Z. T.	Birmingham
Rushton, Ray	Montgomery
Samford, T. D.	Opelika
Samford, W. H.	Montgomery
Sample, John R.	Hartselle
Sanders, W. T.	Athens
Sanders, W. W.	Elba
Sayre, A. D.	Montgomery
Scott, Chas. J.	Fort Payne
Scrivner, R. H.	Birmingham
Seibels, W. T.	Montgomery
Selheimer, H. C.	Birmingham
Sims, Henry Upson	Birmingham
Sims, Marion H.	Talladega
Skeggs, W. E.	Albany
Smith, A. G.	Birmingham
Smith, Ed. D.	Birmingham
Smith, Felix L.	Rockford
Smith, Harry T.	Mobile
Smith, Howard L.	Tuscaloosa
Smith, J. Q.	Birmingham
Smith, R. H.	Mobile
Smith, Sid. T.	Birmingham
Smith, Walter S.	Lineville
Smythe, R. B.	Greenville
Somerville, Ormond	Tuscaloosa
Sorrell, Geo. A.	Alexander City
Sowell, T. L.	Jasper
Sparks, Chauncey	Eufaula
Speake, Paul	Huntsville
Spencer, W. M. Jr.	Birmingham
Stakely, Davis F.	Montgomery
Stallworth, N. E.	Mobile
Steele, N. L.	Birmingham
Steiner, R. E.	Montgomery
Steiner, R. E. Jr.	Montgomery
Stern, Philip H.	Montgomery

Sterne, Roy M. -----Birmingham
 Stevens, Thos. M. -----Mobile
 Stokely, J. T. -----Birmingham
 Stollenwerck, Frank -----Montgomery
 Stone, Jno. S. -----Birmingham
 Stratton, Asa E. -----Montgomery
 Stringfellow, H. -----Montgomery
 Sullivan, Geo. J. -----Mobile

Tayloe, W. H. -----Uniontown
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 Thomas, E. Perry -----Montgomery
 Thomas, J. R. -----Montgomery
 Thomas, Wm. H. -----Montgomery
 Thompson, J. F. -----Centreville
 Thompson, R. DuPont -----Birmingham
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 Tillman, Jno. P. -----Birmingham
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 Trimble, N. W. -----Birmingham
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 Tunstall, W. C. Jr. -----Anniston

Ullman, M. M. -----Birmingham
 Underwood, O. W. Jr. -----Birmingham

Vance, Victor -----Gadsden
 Van deGraaff, A. S. -----Tuscaloosa
 Vardaman, J. W. -----Montgomery
 Verner, C. B. -----Tuscaloosa

Waddell, B. deG. -----Seale

Walker, A. E.	Florence
Ward, J. H.	Birmingham
Walker, R. W.	Huntsville
Walker, W. R.	Athens
Wall, Fred	Athens
*Watts, Edw. S.	Montgomery
Weakley, S. D.	Birmingham
Weatherly, Jas.	Birmingham
Webb, Jas. H.	Mobile
Weil, Lee H.	Montgomery
Weil, Leon	Montgomery
Welch, W. S.	Bessemer
Wert, T. W.	Decatur
Whaley, A.	Andalusia
Whitaker, Spier	Birmingham
White, Addison	Huntsville
White, Frank S.	Birmingham
White, Frank S. Jr.	Birmingham
Whiteside, W. W.	Anniston
Whitfield, Henry J.	Demopolis
Whiting, A. F.	Montgomery
Wilkinson, H. C.	Birmingham
Willett, J. J.	Anniston
Williams, Wm. M.	Washington, D. C.
Wimberly, D. P.	Scottsboro
Wood, Sterling A.	Birmingham
Woodall, W. M.	Birmingham
Wolfes, C. A.	Fort Payne
Yancey, G. W.	Birmingham
Yerger, F. J.	Mobile
*Deceased.	

APPENDIX

ORGANIZATION

Montgomery, Ala., Dec. 13, 1878.

The undersigned members of the legal profession, believing that the formation of a Bar Association of Alabama is desirable, respectfully request the members of the Bar of each County to appoint one or more delegates to attend a Convention of the Bar of the State, to be held in the Hall of the House of Representatives, on the 15th day of January, next, at 7 P. M., and that E. W. Pettus and Wm. M. Brooks of Selma, and W. L. Bragg of Montgomery, are requested to prepare a plan of organization to be submitted to said Convention.

D. S. Troy
T. H. Watts, Sr.
John A. Minnis
Jos. Wheeler
L. P. Walker
F. B. Clark, Jr.
Gaylord B. Clark
Neil McCarron
Geo. F. Moore
W. L. Bragg
J. J. Robinson
E. J. Fitzpatrick
John W. A. Sanford
H. C. Tompkins
John Enochs
Leroy F. Box
A. H. McClung
Wm. G. Cochrane
H. A. Woolf
Alexander Troy
T. M. Arrington
E. P. Morrisett
C. J. Watson
Thos. G. Jones
Milton Humes
W. G. Little, Jr.
J. M. Falkner
Lester C. Smith
J. S. Winter

M. L. Stansel
W. S. Thorington
J. Little Smith
W. P. Chilton
David Clopton
Geo. P. Harrison, Jr.
J. L. Cunningham
A. C. Hargrove
L. A. Dobbs
Jno. D. Roquemore
Jno. A. Padgett
J. R. Satterfield
W. E. Clark
J. W. Bush
Jno. T. Heflin
C. F. Hamill
Jno. A. Foster
Malachi Riley
A. L. Brooks
Thos. W. Williams
F. W. Bowden
G. D. Campbell
H. A. Sharpe
W. P. Jack
J. T. Holtzclaw
Wade Keyes
W. A. Gunter
H. C. Semple

Pursuant to the foregoing call, a preliminary conference in reference to organizing a State Bar Association met in the Hall of the House of Representatives on the 15th of January, 1879.

On motion of D. S. Troy, L. P. Walker of Huntsville, was unanimously elected chairman of the meeting and on motion of J. J. Robinson, of Chambers, Geo. W. Taylor, of Choctaw, was elected secretary pro tem., and the names of thirty members of the Bar, desirous of organizing a State Bar Association, were enrolled by the Secretary.

Messrs. E. W. Pettus, Wm. M. Brooks and W. L. Bragg, the Committee designated and requested in the call to draft a plan of organization to be submitted to the conference through W. L. Bragg, reported a Constitution and By-Laws for The Alabama State Bar Association.

The report of the Committee was received, and the Constitution and By-Laws, subject to amendment by the conference, were adopted.

On motion of Joseph Wheeler, of Lawrence, Alex. Troy, of Montgomery, was elected Secretary and Treasurer of The Alabama State Bar Association as organized under said Constitution and By-Laws.

On motion, the conference adjourned to meet at the same place on Monday, 20th January.

At the re-assembling of the meeting the Chairman, L. P. Walker, being absent, on motion of W. G. Little, Jr., of Sumter, Thos. H. Watts, Sr., of Montgomery, was called to the Chair.

The proposed changes in the Constitution and By-Laws were agreed to unanimously.

D. S. Troy then introduced the following resolutions which were adopted:

Resolved, That this Convention elect a President and five Vice-Presidents of the Bar Association of the State, to serve under the Constitution and By-Laws reported by the Committee as amended by this Convention until the

first annual meeting of said Association, which shall be held on the first Tuesday in December, 1879.

Resolved, That the President of said Association, elected by this Convention, shall appoint the Executive Committee and Central Council, provided for in said Constitution and By-Laws and the persons thus appointed shall discharge the duties of the positions to which they may be appointed, until said first annual meeting and until their successors are elected or appointed, as provided in said Constitution and By-Laws.

Resolved, That any member of the Bar of this State, who shall sign or authorize his signature to the roll of membership of said Bar Association, and pay to the Secretary and Treasurer the initiation fee within sixty days from this date, shall be a member of this Bar Association, and said Constitution and By-Laws shall become operative at the expiration of said period of sixty days on all who shall have subscribed the roll of membership, and paid the initiation fee.

Resolved, That it shall be the duty of the Secretary, without delay, to send by mail a printed copy of said Constitution and By-Laws and of these resolutions to every member of the Bar of this State whose address can be ascertained, and also a circular stating briefly the action of this Convention, the names of the officers elected by it, and the names of the Executive Committee and Central Council appointed by the President.

Resolved, That the Chairman appoint a committee of three to prepare an act of incorporation of the Association, conferring such powers as may be necessary to accomplish the objects declared in the Constitution, and, if practicable, to secure the enactment by the General Assembly.

The Chair appointed W. L. Bragg, W. G. Little, Jr., and G. B. Clark, as the committee to prepare the act of incorporation.

On motion, the Chair appointed a committee of three,

consisting of D. S. Troy, J. Little Smith, and H. A. Woolf, to nominate a President and five Vice-Presidents for the ensuing year.

The Committee, after deliberation, reported the following as the officers of the Association:

President, W. L. Bragg, Montgomery; Vice-Presidents, Peter Hamilton, Mobile; E. W. Pettus, Selma; L. P. Walker, Huntsville; H. M. Somerville, Tuscaloosa; Jas. L. Pugh, Eufaula.

The report of the committee was unanimously adopted.

W. G. Little, Jr., offered the following resolution, which was adopted:

Resolved, That this Bar Association recommends the Alabama Law Journal, published at Tuscaloosa, to the profession of this State as worthy of their support and patronage.

The meeting then adjourned.

THOS. H. WATTS, Chairman.

ALEX. TROY, Secretary.

ACT OF INCORPORATION

AN ACT

Incorporating the Alabama State Bar Association.

Section 1. Be it enacted by the General Assembly of Alabama, That Edmund W. Pettus, Leroy P. Walker, Peter Hamilton, James L. Pugh, H. M. Somerville, Thomas H. Watts, Sr., Daniel S. Troy, William M. Brooks, William G. Little, Jr., John Little Smith and Walter L. Bragg, and their associates and successors, be and they are hereby made a body corporate under the name of, "The Alabama State Bar Association," and with power under that name to sue and be sued, plead and be impleaded, answer and be answered unto, in any of the courts of law or equity in this State, to have a common seal, and to break or alter the same at pleasure, to have, hold and enjoy real and personal estate of the value of not more than twenty thousand dollars, and in addition thereto a library or libraries of books of law or learning without limitation as to value, to buy, sell or dispose of, or acquire in any way property within the limits aforesaid, and for the purposes and objects of the Association as hereinafter set forth.

Sec. 2. Be it further enacted, That the purpose and objects of the said incorporated Association are hereby declared to be: To advance the science of jurisprudence, promote the administration of justice throughout this State, uphold the honor of the profession of the law, and to establish cordial intercourse among the members of the Bar of Alabama.

Sec. 3. Be it further enacted, That said Association shall have power to make a constitution, by-laws, rules and regulations for the order and government of said Association, or of any officer or agent thereof, and to provide for the trial and expulsion of members, or removal

of any officer or agent, and to elect a President, five Vice-Presidents, a Secretary-Treasurer, and all other officers which in its discretion may be deemed necessary or proper for carrying out the objects of the organization, to impose fines and penalties on its members for violation thereof, and that the funds thus received shall be applied to such purposes as the said Association may direct.

Sec. 4. Be it further enacted, That the officers thus elected shall hold office for such time as the said Association shall prescribe; and a failure to elect officers at the proper time therefor shall not operate as a dissolution of the corporation, but such officers shall retain their power and offices until their successors shall be elected or appointed.

Sec. 5. Be it further enacted, That this charter of incorporation can be rendered operative by the said Association organizing or acting thereunder at any time within one year after the passage of this Act, and any organization of said Association heretofore made with reference to obtaining the benefits of this Act of incorporation shall, if operated under the provisions of this Act, be an acceptance thereof if done at any time within the period of one year as aforesaid; and any constitution, by-laws, rules and regulations heretofore adopted by said Association, to take effect then or at a future time under the provisions of this Act of incorporation, shall in all things be as valid as if such constitution, by-laws, rules and regulations, had in all respects been prepared and adopted by said Association to take effect then or at a future time under the provisions of this Act of incorporation, shall in all things be as valid as if such constitution, by-laws, rules and regulations had in all respects been prepared and adopted by said Association after the passage of this Act.

Approved February 12, 1879.

AN ACT

To amend Sections 598, 599, 600, 601, 603, 605, 606, and 610 of the Code of Alabama, (1896).

Be it enacted by the Legislature of Alabama:

Section 1. That Section 598 of the Code of Alabama be, and the same is hereby amended so as to read as follows: The Alabama State Bar Association, or the Central Council thereof, has authority to institute and prosecute, or cause to be instituted and prosecuted, in the name of the State of Alabama, the proceedings herein prescribed for the suspension or removal of an attorney.

Sec. 2. That Section 599 of said Code be, and the same is hereby amended so as to read as follows: The accusation must be in writing, and when the prosecution is instituted by the Alabama State Bar Association, or the Central Council thereof, a written statement signed by said Council, and attested by the Secretary of said Association, accompanied by written affidavit of any person or persons making charges for suspension or removal of such attorney, if any, taken before any officer authorized by law to administer oaths within or out of the State, setting forth the facts upon which the same may be based, shall be delivered by the Secretary of said Association to the Solicitor of the Circuit in which such attorney resides and thereupon, or when the proceeding is taken by the court of its own motion, the Solicitor of said Circuit shall draw up such accusation, citing the accused to appear before said Circuit Court, or City Court, or court of life jurisdiction, on a day named therein, and moving the court for the suspension or removal of such attorney, and have the same served by the sheriff of the county of such attorney's residence, by leaving a copy thereof with the accused.

Sec. 3. That Section 600 of said Code be, and the same is hereby amended so as to read as follows: If the pro-

ceedings are upon the information of an individual, the accusation must be in writing, setting forth the facts upon which the charges are based, verified by the oath of such individual, or some other person, taken before any officer authorized by law to administer oaths in or out of the State, that such facts are true, and must be presented to and filed in said Circuit Court, or City Court, or court of like jurisdiction, accompanied by security for costs to be approved by the judge thereof.

Sec. 4. That Section 601 of said Code be, and the same is hereby amended so as to read as follows: When the accusation is made by an individual, the Circuit Court, or City Court or court of like jurisdiction, must be of opinion that the accusation would, if true, furnish grounds of suspension or removal of such attorney, make an order requiring the accused to appear and answer the same at a specified day during that, or the next term, or at any other time, which the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be served upon the accused; provided, that if such order is made, or the proceedings are instituted by the court of its own motion, or as provided by Section 2 of this Act, ten days before any term of the court, or before the adjournment thereof such accusation must be made returnable and be heard during said term, unless continued for good cause by the court, upon such terms as it may impose.

Sec. 5. That Section 603 of said Code be, and the same is hereby amended so as to read as follows: The accused may answer such accusation, either by objecting in writing to the sufficiency thereof, or by denying the truth of the facts alleged or setting forth the facts of his defense, which said answer as to facts, by denial or otherwise, must be in writing, signed by the accused and verified by his oath, and the accusation, objections and answer in said proceedings are hereby made a record therein as in other civil suits or proceedings in said court.

Sec. 6. That Section 605 of said Code be, and the same is hereby amended so as to read as follows: If the accused pleads guilty, or fails or refused to answer the accusation, the court must proceed to judgment of suspension or removal; if he answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same, either side having the right to demand a trial by jury; if no jury is demanded, the court in trying the same shall make and file a statement of the facts established by the evidence, and if the jury is demanded, the jury must make a special finding of the facts, upon issues of facts submitted by the court, and up such statements of facts by the court, or special findings of facts by the jury, the court must render judgment of acquittal or suspension, or removal, of the accused, as such facts may warrant; provided, however, that such accused attorney may stop or prevent such prosecution by a surrender of his license as an attorney in all the courts of the State of Alabama, a record of which surrender shall be made in the Supreme Court of said State.

Sec. 7. That Section 606 of said Code be, and the same is hereby amended so as to read as follows: The proceedings when instituted by the court of its own motion, or when the written statement hereinbefore provided for has been precented by the Alabama State Bar Association, or its Central Council, to the Solicitor of the Circuit, in which the accused resides, must be conducted in the name of the State, and when on the information of an individual in the name of the State upon the information of such person; and in all cases the Solicitor of said Circuit shall appear and sustain such accusation, and be responsible for the faithful performance thereof as of other official duties required of him by law; provided, however, that the court may, upon the motion of said Solicitor, and upon good cause shown at any time require said The Alabama State Bar Association to give security for the costs of such proceedings to be approved by the court within ten days from

notice to the Secretary of said Association, by said Solicitor, and the hearing of said cause shall be postponed for that time, unless such security shall be sooner given.

Sec. 8. That Section 610 of said Code, be, and the same is hereby amended so that the same shall read as follows: Either party may appeal to the Supreme Court from any adverse judgment rendered by said Circuit Court, City Court, or court of like jurisdiction, in said proceedings, at any time within thirty days after such judgment, in the manner now prescribed by law for appeals in civil cases, and may reserve by bill of exception any question proper to be reserved in civil causes and the judgment rendered in said proceedings, and the Supreme Court may affirm, modify, or reverse such judgment, or render such judgment in such proceeding as the Circuit Court, City Court, or court of like jurisdiction, shall have rendered.

Sec. 9. Whenever any disagreement or controversy rises between an attorney at law and any other person, respecting the amount of the compensation to which he is entitled by contract or otherwise, and his retention of the same out of any funds in his hands, such attorney may by motion in the Circuit Court, City Court, or court of like jurisdiction, of the county of his residence of which such other person shall have notice, obtain an order of said court that a certain amount is due him under such contract, or would be reasonable compensation for his services, and when such motion is made and order obtained, such attorney shall not be subject to prosecution, suspension or removal under this act, and other penalty therefor; but nothing herein contained shall affect or destroy any civil action to which any person would be entitled against such attorney respecting the same or any criminal prosecution which the accused would be otherwise liable.

Sec. 10. All laws and parts of laws in conflict with this act are hereby repealed.

Approved Oct. 3, 1903.

AN ACT

To amend Section 2995 of the Code.

Be it enacted by the Legislature of Alabama, That Section 2995 of the Code be amended so as to read as follows:

Section 1. The Alabama State Bar Association or the Central Council thereof has authority to institute and prosecute or cause to be instituted and prosecuted in the name of the State of Alabama the proceedings herein prescribed for the suspension or removal of an attorney. Provided, however, that when such proceedings are instituted by said Bar Association or its Central Council, no security for costs shall be required to be given, nor shall said Association or the Central Council or the members thereof, be liable for costs if the proceedings instituted by it are not sustained.

Approved August 25, 1915.

AN ACT

To prescribe the time within which proceedings for the disbarment of an attorney at law must be begun.

Be it enacted by the Legislature of Alabama. Section 1. That all proceedings in any court of this State to disbar any attorney authorized to practice law in this State must be begun within three years after the act made the basis of such proceedings shall have been committed.

Section 2. That all laws and parts of laws, either general, special or local, in conflict with this act be and the same are hereby repealed.

Approved September 28, 1915.

CONSTITUTION

ARTICLE I.

The object of the Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the Bar of Alabama. This Association shall be known as "The Alabama State Bar Association."

ARTICLE II.

Any white member of the legal profession who is a member of the Bar of the State in good standing may become a member by vote of the Association, on open nomination.

ARTICLE III.

The Officers of the Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, a Central Council, and Executive Committee, which committee shall be composed of five members, one of whom shall be the Secretary and Treasurer of the Association.

Each of the officers, council and committee, shall be elected at each annual meeting by the Association for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. They shall hold office from the adjournment of the meeting at which they are elected .

ARTICLE IV.

The Central Council shall consist of five members and shall be at all times an advisory board for consultation

and conference when called on for that purpose by the President or any Vice-President who may for the time being be acting as President.

ARTICLE V.

The President by and with the advice and consent of the Central Council, may establish a Local Council in any County of this State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

ARTICLE VI.

The admission fee shall be five dollars and the annual dues shall be five dollars, to be paid as may be prescribed by the By-Laws. The admission fee shall be in lieu of the annual dues for the current year in which it is paid. No member shall be qualified to exercise any privilege of membership while his fees or dues remain unpaid; Provided, however, that a member who has paid twenty-five annual dues, including the admission fee, shall be exempt thereafter from the payment of annual dues.

ARTICLE VII.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

ARTICLE VIII.

The following committees shall be annually appointed by the President for the ensuing year, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Publication.
5. On Correspondence.
6. On Legislation.
7. On Local Bar Associations.

A majority of the members of any committee, or of the Central Council who may be present at any meeting of such committee or council, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President.

ARTICLE IX.

The Central Council and Executive Committee shall each perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee may determine, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting, by publication in a newspaper, to be given; which publication shall be made by the Secretary.

ARTICLE XI.

The President shall open each annual meeting of the Association with an address in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year.

ARTICLE XII.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

ARTICLE XIII.

Each Local Council shall perform such duties as it may be called upon to perform by the President or as may be defined by the By-Laws.

ARTICLE XIV.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association or in his profession, on conviction thereof, as may be prescribed by the By-Laws.

ARTICLE XV.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Alabama as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as Trustee thereof, who shall pay over and deliver the same to said corporation as its property as soon as the corporation is created by law.

ARTICLE XVI.

The two offices of Secretary and Treasurer may be filled by one person, if the Association shall, by its By-Laws, so determine.

BY-LAWS

I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside.

II.

The Secretary shall keep a record of all meetings of the Association, and all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election and shall keep a roll of the members, and shall issue notice of all meetings.

III.

The Treasurer shall collect, and, under the direction of the Executive Committee disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of his office, the incumbent shall execute a bond with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.

The Executive Committee shall meet at least once a month, except in July, August and September. They shall

have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

They shall have power to reinstate a member who has been dropped from the roll for the non-payment of dues, upon the payment of such back-dues as the Committee shall think equitable, and it shall be the duty of the Committee to nominate such applicants for membership in the Association as have received their favorable consideration.

V.

The Central Council shall perform all such duties as may be required of them by the Constitution or as are assigned to them by the President, but they shall not be required to keep a record of their proceedings, nor shall they make any report to any meeting of the Association, unless such report is required by the Association, and then only as to the particulars about which they are required to report; and the provisions of this section shall apply also to the Local Councils.

VI.

At each annual, stated or adjourned meeting of the Association the order of business shall be as follows:

1. Address of the President.
2. Report of the Treasurer.

3. Report of the Executive Committee.
4. Election, if any, to membership.
5. Reports of Standing Committees.
6. Reports of Special Committees.
7. Election of officers and Appointment of Committees.
8. Miscellaneous Business.

This order of business may be changed by a vote of the majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VII.

If a person elected does not, within a month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of the admission fee, he shall be deemed to have declined to become a member.

VIII.

In pursuance of Article VIII of the Constitution, there shall be the following Standing Committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as in their opinion may be entitled to the favorable consideration of the Association.
2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association such action as they may deem expedient.
3. A Committee on Legal Education and Admission to

the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Alabama.

4. A Committee on Publication, who shall be charged with the duty of examining and reporting, when so required by the Association, upon matters proposed to be published by its authority.

5. A Committee on Correspondence, who shall be charged with the duty of corresponding with the officers and committees of other Bar Associations for the purpose of causing action relative to law questions of national importance.

6. A Committee on Legislation, who shall be charged with the duty of ascertaining and reporting to each meeting of the Bar Association such legislation as it may approve of and consider necessary and proper to carry into effect the suggestion contained in the reports of the various committees, and papers read at any previous meeting, and it shall be the duty of said committee to prepare, at the expense of this Association, and cause to be printed and distributed by the Secretary to the members of the Association, at least thirty days before each annual meeting, in the form of bills or resolutions, all of such measures as may be reported by it for their consideration, together with the report of the committee.

All reports submitted to the Association recommending changes in the statutory laws, or amendments thereto, shall be accompanied by bills or joint resolutions in the form to be presented to the General Assembly for enactment.

7. A Committee on Local Bar Associations, who shall be charged with the duty of encouraging the organization and maintenance of Local Bar Associations throughout the State, and their affiliation with this Association.

8. A Special Committee on Legislative Enactment shall be appointed by the President at the meeting next

before each session of the Legislature, which shall be continued until the annual meeting after the next session of the Legislature, and it shall be the duty of said Committee to present to the Legislature, all such bills, the enactment of which have been recommended by this Association.

The President may, whenever he deems it advisable, appoint as many special committees as he thinks proper, whose duty it shall be to promote the enactment by the Legislature of any bill or bills which have received the approval of this Association.

The Secretary of the Association, at the expense of the Association, shall furnish to each member of the Committee on Legislative Enactment and to each member of any Special Committee so appointed by the President, a copy of such bills as have been approved by the Association.

It shall be the duty of the Committee on Legislative Enactment and of the Special Committees to report to the Association next after the meeting of the Legislature.

9. A Special Committee of three members, to be known as the Committee on Violation of Ethics and Law by Attorneys whose duty it shall be to inquire into all alleged breaches of the ethics of the profession or violations of law by attorneys, armed with inquisitorial powers, and to institute proceedings before the Central Council for the purpose of disbarring or suspending any attorney whom they may deem to be guilty of offenses justifying disbarment or suspension.

Said Committee may sit during the year at such times and places as it may determine.

IX.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of this Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with

power to adopt rules for their own government not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation of the member so absent, of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance and may provide for the disposition of the fines collected under such rule.

By-Law X repealed July 14, 1910.

XI.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

XII.

All vacancies in any office or committee of this Association shall be filled by appointment of the President and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy and the person elected shall hold office for the unexpired term of his predecessor.

XIII.

Every member of this Association, except non-resident honorary members, shall pay his annual dues to the Treas-

urer on the first day of March in each year, and if said dues remain unpaid at the time of the meeting of the Association, following the accrual of such dues, the members so in default shall be dropped from the roll of members.

XIV.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

XV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

XVI.

The offices of Secretary and Treasurer shall be filled by the Secretary, and his annual salary shall be five hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier or at any other time if Executive Committee shall, in writing, so direct, but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVII.

The Association shall have its annual meeting at such time and place as the Executive Committee may determine, and continue in session until all the business before it is disposed of. If the President and Executive Com-

mittee shall determine that it is necessary for said Association to hold any other meeting, during any year, the same shall be held at such time and place as the Executive Committee may fix, and upon twenty days' notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

XVIII.

Each County, City or Local Bar Association of this State may annually appoint delegates, not exceeding two in number, to the next meeting of this Association. Such delegates, if not regular members of this Association, shall be entitled to all the privileges of membership at and during the said meeting except that of voting.

XIX.

No member shall be permitted to speak more than twice on any subject, and in debate, no speech shall exceed ten minutes in length, unless a majority of those present consent thereto.

XX.

The Association shall not take any partisan political action, nor indorse or recommend any person for any official position.

XXI.

The traveling and other necessary expenses incurred by the Special Committee on Violation of Code of Ethics and Law by Attorneys during the interval between the annual meetings of the Association shall be paid by the Treasurer, on the approval and by order of the Executive Committee.

**CODE OF ETHICS OF THE ALABAMA STATE BAR
ASSOCIATION**

Adopted December 14, 1887.

Note.—This Code was prepared by a Committee of the Association and is believed to be the first ever adopted. It has been the model for the Code adopted by the American Bar Association and many State Bar Associations.

The Association has had copies of this Code suitably printed on card board, framed and placed on the walls of every Court House in the State.

The purity, and efficiency of judicial administration which under our system is largely governmental itself, depend as much upon the character, conduct and demeanor of attorneys in this great trust, as upon the fidelity and learning of courts, or the honesty, and intelligence of juries.

“There is perhaps no profession after that of the sacred ministry, in which a high toned morality is more imperatively necessary than that of the law. There is certainly without any exception, no profession in which so many temptations beset the path to swerve from lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as moral courage, which belongs commonly to riper years. High moral principle is the only safe guide; the only torch to light his way amidst darkness and obstruction.”—Sharswood.

A comprehensive summary of the duties specifically en-

joined by law upon attorneys, which they are sworn "not to violate," is found in Section 791 of the Code of Alabama.

These duties are:

"First—To support the Constitution and laws of this State and the United States.

"Second—To maintain the respect due courts of justice and judicial officers.

"Third—To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never seek to mislead the judges by any false statement of the law.

"Fifth—To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which they are charged.

"Seventh—Never to reject, for any consideration personal to themselves, the cause of the defenseless and oppressed."

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules and an authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by analogy to the duties enjoined by statute, and the rules of good neighborhood.

The following general rules are adopted by the Alabama State Bar Association for the guidance of its members:

DUTIES OF ATTORNEYS TO COURTS AND JUDICIAL OFFICERS.

1. The respect enjoined by law for courts and judicial officers is exacted for the sake of the office, and not for the individual who administers it. Bad opinion of the incumbent, however well founded, cannot excuse the with-

holding of the respect due the office, while administering its functions.

2. The proprieties of the judicial station, in a great measure, disable the judge from defending himself against strictures upon his official conduct. This reason, and because such criticisms tend to impair public confidence in the administration of justice attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.

3. Marked attention and unusual hospitality to a judge, when the relations of the parties are such that they would not other wise be extended, subject both judge and attorneys to misconstructions, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due the judge's station, is the only just foundation for cordial personal and official relations between bench and bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4. Courts and judicial officers, in the rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5. The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other—knowingly citing as authority an overruled case, or treating a repealed statute as in existence—knowingly misquoting the language of a decision or text book—knowingly misquoting the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel—offering evidence which it is known the court

must reject as illegal, to get it before the jury, under the guise of arguing its admissibility—and all kindred practices—are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening argument positions intended finally to be relied on, in order that opposite counsel may not discuss them, is unprofessional. Courts and juries look with disfavor on such practices, and are quick to suspect the weakness of the cause which has need to resort to them.

In the argument of demurrers, admissions of evidence, and other questions of law, counsel should refrain from "side-bar" remarks and sparring discourse to influence the jury or bystanders. Personal colloquies between counsel tend to delay, and promote unseemly wrangling, and ought to be discouraged.

6. Attorneys owe to the courts and the public whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7. One side must always lose the cause; and it is not wise, or respectful to the court, for attorneys to display temper because of an adverse ruling.

DUTIES OF ATTORNEYS TO EACH OTHER, TO CLIENTS AND THE PUBLIC.

8. An attorney should strive at all times, to uphold the honor, maintain the dignity, and to promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely the obligation to his brothers, but a high duty to the State and his fellow-man.

9. An attorney should not speak slightly or disparagingly of his profession, or pander in any way to unjust popular prejudices against it and he should scrupulously

refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10. Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and in withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to the loss of life itself can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to the Creator, or loosen the duty of obedience to law, and the obligation to his neighbor; and does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake.

11. Attorney's should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12. An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused is innocent, forswears himself. The State's attorney is criminal, if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a nolle pros.,

a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13. An attorney cannot reject the defense of a person accused of a criminal offense, because he knows or believes him guilty. It is his duty by all fair and honorable means to present such defenses as the law of the land permits, to the end that no one may be deprived of life or liberty, but by due process of law.

14. An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harrass or injure the opposite party, or to work oppression and wrong.

15. It is bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16. Newspaper advertisements, circulars, and business cards, tendering professional services to the general public are proper; but special salicitation of particular individuals to become clients ought to be avoided. Indirect advertisement for business, by furnishing or inspiring editorials or press notices, regarding causes in which the attorney takes part, the manner in which they are conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency, and wholly unprofessional.

17. Newspaper publications by an attorney as to the merits of pending or anticipated litigation, call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications; and when proper, it is unprofessional to make them anonymously.

18. When an attorney is a witness for his client except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the

ends of justice, an attorney should scrupulously avoid testifying in court on behalf of his client, as to any matter.

19. The same reasons which make it improper in general for an attorney to testify for his client, apply with greater force to assertions, sometimes made by counsel in argument, of personal belief in the client's innocence or the justice of his cause. If such assertions are habitually made they lose all force and subject the attorney to falsehoods; while the failure to make them in particular cases will often be esteemed a tacit admission of belief of the client's guilt, or the weakness of his cause.

20. It is indecent to hunt up defects in titles and the like and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action, and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust, make it an attorney's duty, it is unprofessional to volunteer advice to bring a lawsuit. Stirring up strife and litigation is forbidden by law, and disreputable in morals.

21. Communications and confidences between client and attorney are the property and secrets of the client, and cannot be divulged, except at his instance; even the death of the client does not absolve the attorney from his obligation of secrecy.

22. The duty not to divulge the secrets of clients extends further than mere silence by the attorney, and forbids accepting retainers or employment afterwards from others involving the client's interests, in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material, in a subsequent suit, as the basis of any judgment which may injuriously affect his rights, the attorney can not appear in such cause, without the consent of his former client.

23. An attorney can never attack an instrument or paper drawn by him for an infirmity apparent on its face; nor for any other cause where confidence has been re-

posed as to the facts concerning it. Where the attorney acted as a mere conveyancer, and was not consulted as to the fact, and unknown to him, the transaction amounted to the violation of the criminal laws, he may assail it on that ground, in suits between third persons, or between parties to the instrument and strangers.

24. An attorney openly, and in his true character, may render purely professional services before committees, regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the courts; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

25. An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all concerned, with full knowledge of the facts. Even then such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests within the meaning of this rule, when it is his duty, in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.

26. "It is not a desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought out and retained to gratify the malevolent feeling of a suitor in hearing the other side well lashed and villified."

27. An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the attorney's conscience in professional matters. He cannot demand as a right that his attorney shall abuse the opposite party or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine

for himself whether such a course is essential to the ends of justice and therefore justifiable.

28. Clients and not their attorneys are the litigants; and whatever may be the ill-feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29. In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon the personal history, or mental or physical peculiarities or idiosyncracies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories, and the like; the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted on the attorney should retire from the cause.

31. Where an attorney has more than one regular client, the oldest client in the absence of some agreement should have the preference of retaining the attorney, as against his other clients in litigation between them.

32. The miscarriages to which justice is subject, and the uncertainty of predicting results, admonish attorneys to beware of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain.

33. Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

34. An attorney is in honor bound to disclose to the client at the time of retainer, all the circumstances of his relation to the parties, or interest or connection with the controversy, which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligation or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

35. An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it, he ought to seek to adjust it without litigation, if practicable.

36. Where an attorney, during the existence of a relation, has lawfully made an agreement which binds his client, he cannot honorably refuse to give the opposite party evidence of the agreement, because of his subsequent discharge or instructions to that effect by his former client.

37. Money or other trust property coming into the possession of the attorney should be promptly reported, and never commingled with his private property or used by him, except with the client's knowledge and consent.

38. Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their clients; and they ought scrupulously to refrain from bargaining about the subject matter of their litigation, so long as the relation of attorney and client continues.

39. Natural solicitude of clients often prompts them to offer assistance of additional counsel. This should not be met, as it sometimes is, as evidence of want of con-

fidence; but after advising frankly with the client, it should be left to his determination.

40. Important agreements affecting the rights of clients should, as far as possible, be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made, because not reduced in writing, as required by rules of court.

41. An attorney should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving opposing counsel timely notice.

42. An attorney should not attempt to compromise with the opposite party, without notifying his client, if practicable.

43. When attorneys jointly associate in a cause cannot agree as to any matter vital to the interest of the client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in unless the nature of the difference makes it impracticable for the attorneys to co-operate heartily and effectively; in which event, it is his duty to ask to be discharged.

44. An attorney coming into a cause in which others are employed, should give notice as soon as practicable, and ask for a conference, and if the association is objectionable to the attorney already in the cause, the other attorney should decline to take part, unless the first attorney is relieved.

45. An attorney ought not to engage in discussion of argument about the merits of the case with the opposite party, without notice to his attorney.

46. Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset, as to amount of the attorney's compensation; and when it is possible, this should always be agreed on in advance.

47. In general it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum

be reasonable, than to engage in a law suit to justify it, which ought always to be avoided, except as a last resort to prevent imposition or fraud.

48. Men, as a rule, overestimate rather than under value the worth of their services, and attorneys in fixing their fees should avoid charges which unduly magnify the value of their advice and services, as well as those which practically belittle them. A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all.

49. An attorney may charge a regular client, who entrusts him with all his business, less for a particular service than he would charge a casual client for like service. The element of uncertainty of compensation where a contingent fee is agreed on, justifies higher charges than where compensation is assured.

50. In fixing fees the following elements should be considered; 1st. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly conduct the cause. 2nd. Whether the particular case will debar the attorney's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case, and the antagonism with other clients growing out of the employment. 3d. The customary charges of the bar for similar services. 4th. The real amount involved and the benefit resulting from the services. 5th. Whether the compensation was contingent or assured. 6th. Is the client a regular one, retaining the attorney in all his business? No one of these considerations is in itself controlling. They are mere guides in ascertaining what the service was really worth; and in fixing the amount it should never be forgotten that the profession is a branch of the

administration of justice and not a mere money-getting trade.

51. Contingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred.

52. Casual and slight services should be rendered without charge by one attorney to another in his personal cause; but when the services goes beyond this, an attorney may be charged as other clients. Ordinary advice and services to the family of a deceased attorney should be rendered without charge in most instances; and where the circumstances make it proper to charge, the fees should generally be less than in cases of other clients.

53. Witnesses and suitors should be treated with fairness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without vilification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness's testimony and often rob deserved strictures of proper weight.

54. It is the duty of the court and its officers to provide for the comfort of jurors. Displaying special concern for their comfort and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, or take a recess, solely on the ground of the jury's fatigue, or hunger, and uncomfortableness of their seats, or the court room, and the like—should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court; whereby there will be no appearance of fawning upon the jury, nor ground for ill-feeling of the jury towards the court or opposite counsel, if such requests are denied. For like reasons, one attorney should never ask another in the presence of the jury, to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys, without indicating their preference, should ask to be heard after the jury withdraws.

55. An attorney ought never to converse privately with jurors about the case ; and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course, no matter how blameless the attorney's motives, gives color to the imputing evil designs, and often leads to scandal in the administration of justice.

56. An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenseless and oppressed.

DATES AND PLACES OF MEETING

	Year.	Date.	Place.
	1879.	January 15, Organization -----	Montgomery
1.	1879.	December 4 -----	Montgomery
2.	1880.	December 2 -----	Montgomery
3.	1881.	December 28-30 -----	Mobile
4.	1882.	November 20-21 -----	Montgomery
5.	1883.	August 1-2 -----	Blount Springs
6.	1884.	August 6-7 -----	Birmingham
7.	1884.	December 3 -----	Montgomery
8.	1885.	December 2-3 -----	Montgomery
9.	1886.	December 1-2 -----	Montgomery
10.	1887.	December 14-15 -----	Montgomery
11.	1888.	December 19-20 -----	Montgomery
12.	1889.	July 31, and August 1 -----	Huntsville
13.	1890.	August 6-7 -----	Anniston
14.	1891.	July 8-9 -----	Mobile
15.	1892.	July 6-7 -----	Montgomery
16.	1893.	July 5-6 -----	Montgomery
17.	1894.	July 10-11 -----	Montgomery
18.	1895.	July 10-11 -----	Montgomery
19.	1896.	August 5-6 -----	Birmingham
20.	1897.	June 30, and July 1 -----	Montgomery
21.	1898.	June 17-18 -----	Montgomery
22.	1899.	June 16-17 -----	Montgomery
23.	1900.	June 15-16 -----	Montgomery
24.	1901.	June 28-29 -----	Montgomery
25.	1902.	July 4-5 -----	Huntsville
26.	1903.	June 19-20 -----	Montgomery
27.	1904.	July 8-9 -----	Montgomery
28.	1905.	June 30, and July 1 -----	Montgomery
29.	1906.	July 6-7 -----	Anniston
30.	1907.	June 28-29 -----	Montgomery

LIST OF DATES AND PLACES OF MEETING 351

31.	1908.	July 1-2	-----	Montgomery
32.	1909.	July 8-9	-----	Birmingham
33.	1910.	July 13-14	-----	Mobile
34.	1911.	July 7-8	-----	Montgomery
35.	1912.	July 12-13	-----	Montgomery
36.	1913.	July 11-12	-----	Mobile
37.	1914.	July 10-11	-----	Montgomery
38.	1915.	July 9-10	-----	Montgomery
39.	1916.	July 14-15	-----	New Decatur
40.	1917.	July 12, 13, 14	-----	Birmingham

LIST OF FORMER PRESIDENTS

WALTER L. BRAGG	1879	Montgomery
E. W. PETTUS	1879-80	Dallas
JOHN LITTLE SMITH	1880-81	Mobile
EDWARD A. O'NEAL	1881-82	Lauderdale
M. L. STANSEL	1882-83	Pickens
HENRY C. SEMPLE	1883-84	Montgomery
(to Aug. 7, 1884)		
N. H. R. DAWSON	1884	Dallas
(Aug. 7 to Dec. 3)		
W. H. BARNES	1884-85	Lee
WILLIAM M. BROOKS	1885-86	Dallas
H. C. TOMPKINS	1886-87	Montgomery
W. F. FOSTER	1887-88	Macon
MILTON HUMES	1888-89	Madison
THOS. H. WATTS	1889-90	Montgomery
HANNIS TAYLOR	1890-91	Mobile
A. B. McEACHIN	1891-92	Tuscaloosa
A. C. HARGROVE	1892-93	Tuscaloosa
J. R. DOWDELL	1893-94	Chambers
JAMES E. WEBB	1894-95	Hale
*DANIEL S. TROY	1895-96	Montgomery
RICHARD H. CLARKE	1896-97	Mobile
JNO. P. TILLMAN	1897-98	Jefferson
JNO. D. ROQUEMORE	1898-99	Montgomery
JOS. J. WILLETT	1899-1900	Calhoun
THOMAS G. JONES	1900-01	Montgomery
EDWARD L. RUSSELL	1901-02	Mobile
LAYRENCE COOPER	1902-03	Madison
EDW. de GRAFFENREID	1903-04	Hale
THOMAS R. ROULHAC	1904-05	Colbert
GEORGE P. HARRISON	1905-06	Lee
FRED. G. BROMBERG	1906-07	Mobile
H. S. D. MALLORY	1907-08	Dallas
Wm. S. THORINGTON	1908-09	Montgomery
EMMET O'NEAL	1909-10	Lauderdale
JOHN LONDON	1910-11	Jefferson
JOHN PELHAM	1911-12	Calhoun
FRANK S. WHITE	1912-13	Jefferson
THOMAS M. STEVENS	1913-14	Mobile
RAY RUSHTON	1914-15	Montgomery
CHARLES S. McDOWELL	1915-16	Barbour
JOSEPH H. NATHAN	1916-17	Colbert

*From the death of Col. Troy, September 27, 1895, General Richard C. Jones, First Vice President, acted as President and made the Address at the meeting of the Association.

LIST OF FORMER VICE-PRESIDENTS.

- 1879.	{	Peter Hamilton -----	Mobile
	{	L. P. Walker -----	Madison
	{	E. W. Pettus -----	Dallas
	{	H. M. Somerville -----	Tuscaloosa
	{	J. L. Pugh -----	Barbour
1879-80.	{	Jno. T. Heflin -----	Talladega
	{	Wm. G. Jones -----	Mobile
	{	H. M. Somerville -----	Tuscaloosa
	{	Thos. H. Watts -----	Montgomery
	{	H. D. Clayton -----	Barbour
1880-81.	{	David Clopton -----	Montgomery
	{	Jno. M. McKleroy -----	Barbour
	{	Jno. G. Harris -----	Sumter
	{	Milton Humes -----	Madison
	{	Louis Wyeth -----	Marshall
1881-82.	{	M. L. Stansel -----	Pickens
	{	H. D. Clayton -----	Barbour
	{	H. T. Toulmin -----	Mobile
	{	Thos. H. Watts -----	Montgomery
	{	R. H. Abercrombie -----	Macon
1882-83.	{	Wm. H. Barnes -----	Lee
	{	H. C. Jones -----	Lauderdale
	{	Hannis Taylor -----	Mobile
	{	Jno. A. Foster -----	Barbour
	{	N. H. R. Dawson -----	Dallas
1883-84.	{	N. H. R. Dawson -----	Dallas
	{	R. O. Pickett -----	Lauderdale
	{	Jno. M. McKleroy -----	Barbour
	{	Gaylord B. Clark -----	Mobile
	{	Jno. M. Martin -----	Tuscaloosa
- 1884—	{	Gaylord B. Clark -----	Mobile
	{	George P. Harrison -----	Lee
	{	M. T. Porter -----	Jefferson
	{	Daniel Coleman -----	Madison
	{	John W. Bush -----	Jefferson

1884-85.	{	Peter Hamilton -----	Mobile
		D. S. Troy -----	Montgomery
		A. B. McEachin -----	Tuscaloosa
		R. T. Simpson -----	Lauderdale
		S. W. John -----	Dallas
1885-86.	{	Thos. Seay -----	Hale
		C. G. Wagner -----	Shelby
		J. D. Gardner -----	Pike
		H. Austill -----	Mobile
		W. F. Foster -----	Macon
1886-87.	{	Hannis Taylor -----	Mobile
		Wm. H. Denson -----	Etowah
		S. W. John -----	Dallas
		G. W. Hewitt -----	Jefferson
		J. L. Peters -----	Shelby
1887-88.	{	G. W. Hewitt -----	Jefferson
		A. C. Hargrove -----	Tuscaloosa
		Jno. B. Knox -----	Calhoun
		F. G. Bromberg -----	Mobile
		Reuben Chapman -----	Sumter
1888-89.	{	Hannis Taylor -----	Mobile
		Thos. G. Jones -----	Montgomery
		T. B. Roy -----	Dallas
		Thos. L. Roulhac -----	Colbert
		Jno. M. Martin -----	Tuscaloosa
1889-90.	{	A. B. McEachin -----	Tuscaloosa
		E. L. Russell -----	Mobile
		Jno. D. Brandon -----	Madison
		J. F. Stallings -----	Butler
		H. C. Jones -----	Landerdale
1890-91.	{	A. B. McEachin -----	Tuscaloosa
		J. M. McKleroy -----	Calhoun
		Jno. C. Anderson -----	Marengo
		D. D. Shelby -----	Madison
		J. T. Holtzclaw -----	Montgomery
1891-92.	{	Thos. Seay -----	Hale
		D. P. Bestor -----	Mobile
		E. P. Morrisett -----	Montgomery
		A. E. Goodhue -----	Etowah
		Geo. W. Peach -----	Barbour

LIST OF FORMER VICE-PRESIDENTS

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1892-93.	{	J. R. Dowdell -----	Chambers
		E. L. Russell -----	Mobile
		C. C. Harris -----	Morgan
		S. A. Wood -----	Montgomery
		F. L. Pettus -----	Dallas
1893-94.	{	Jas. E. Webb -----	Jefferson
		Thos. R. Roulhac -----	Colbert
		Jno. D. Roquemore -----	Montgomery
		J. J. Willett -----	Calhoun
		D. P. Bestor -----	Mobile
1894-95.	{	D. T. Blakey -----	Montgomery
		H. S. D. Mallory -----	Dallas
		Harry Pillans -----	Mobile
		George P. Jones -----	Lauderdale
		A. S. Van de Graaff -----	Tuscaloosa
1895-96.	{	R. C. Jones -----	Wilcox
		G. Y. Overall -----	Mobile
		W. L. Clay -----	Madison
		S. H. Dent, Jr. -----	Barbour
		S. D. Weakley -----	Jefferson
1896-97.	{	George P. Jones -----	Lauderdale
		Wm. A. Walker -----	Jefferson
		George W. Peach -----	Barbour
		W. L. Martin -----	Jackson
		J. J. Mayfield -----	Tuscaloosa
1897-98.	{	George P. Harrison -----	Lee
		Thos. R. Roulhac -----	Colbert
		W. H. Tayloe -----	Perry
		E. A. Graham -----	Montgomery
		A. A. Evans -----	Barbour
1898-99.	{	J. J. Willett -----	Calhoun
		E. K. Campbell -----	Jefferson
		Harry Pillans -----	Mobile
		J. A. W. Smith -----	Jefferson
		S. A. Wood -----	Tuscaloosa
1899-1900.	{	S. D. Weakley -----	Jefferson
		E. B. Almon -----	Colbert
		Edw. de Graffenreid -----	Hale
		F. G. Bromberg -----	Mobile
		J. B. Duke -----	Lee

1900-01.	{	Jno. W. Tomlinson -----	Jefferson
		Lawrence Cooper -----	Madison
		J. J. Mayfield -----	Tuscaloosa
		D. P. Bestor -----	Mobile
		W. L. Parks -----	Pike
1901-02.	{	James Weathedly -----	Jefferson
		A. H. Alston -----	Barbour
		Edw. de Graienreid -----	Hale
		J. T. Kirk -----	Calhoun
		P. A. McDaniel -----	Henry
1902-03.	{	Edw. de Greffenreid -----	Hale
		W. L. Martin -----	Montgomery
		S. A. Wood -----	Montgomery
		L. E. Jeffries -----	Dallas
		C. C. Harris -----	Morgan
1903-04.	{	Jno. B. Knox -----	Calhoun
		Horace Stringfellow -----	Montgomery
		J. M. Foster -----	Tuscaloosa
		W. B. Bankhead -----	Madison
		J. W. Gray -----	Mobile
1904-05.	{	George P. Harrison -----	Lee
		D. P. Bestor -----	Mobile
		W. S. Thorington -----	Montgomery
		Phares Coleman -----	Montgomery
		C. R. Bricken -----	Crenshaw
1905-06.	{	Fredk. G. Bromberg -----	Mobile
		Emmet O'Neal -----	Lauderdale
		S. D. Weakley -----	Jefferson
		W. W. Callahan -----	Morgan
		Chas. P. Jones -----	Montgomery
1906-07.	{	H. S. D. Mallory -----	Dallas
		A. D. Sayre -----	Montgomery
		J. H. Nathan -----	Colbert
		W. W. Whiteside -----	Calhoun
		Henry Fitts -----	Jefferson
1907-08.	{	Mac A. Smith -----	Autauga
		W. O. Mulkey -----	Geneva
		W. T. Sanders -----	Limestone
		J. A. W. Smith -----	Jefferson
		Tipton Mullins -----	Chilton

1908-09.	{	Emmet O'Neal -----	Landerdale
	{	J. H. Nathan -----	Colbert
	{	W. P. Acker -----	Calhoun
	{	D. P. Bestor, Jr. -----	Mobile
	{	W. M. Lackey -----	Tallapoosa
1909-10.	{	John London -----	Jefferson
	{	W. M. Lackey -----	Tallapoosa
	{	E. W. Faith -----	Mobile
	{	Daniel Partridge, Jr. -----	Dallas
	{	McLane Tilton, Jr. -----	St. Clair
1910-11.	{	Lawrence Cooper -----	Madison
	{	W. P. Acker -----	Calhoun
	{	T. M. Stevens -----	Mobile
	{	B. B. Bridges -----	Tallapoosa
	{	C. B. Verner -----	Tuscaloosa
1911-12.	{	R. F. Ligon -----	Montgomery
	{	Paul Speake -----	Madison
	{	Thos. S. Fraser -----	Bullock
	{	Jno. E. Mitchell -----	Mobile
	{	W. W. Lavender -----	Bibb
1912-13.	{	Virgil Bouldin -----	Jackson
	{	W. W. Pearson -----	Montgomery
	{	J. D. Dixon -----	Talladega
	{	W. L. Pitts -----	Perry
	{	W. E. Gibson -----	Jefferson
1913-14.	{	Joseph H. Nathan -----	Colbert
	{	W. C. Fitts -----	Jefferson
	{	W. B. Oliver -----	Tuscaloosa
	{	E. J. Garrison -----	Clay
	{	C. S. McDowell, Jr. -----	Barbour
1914-15.	{	Joseph H. Nathan -----	Colbert
	{	W. C. Fitts -----	Jefferson
	{	C. S. McDowell, Jr. -----	Barbour
	{	N. D. Godbold -----	Wilcox
	{	J. T. Stokely -----	Jefferson
1915-16.	{	Joseph H. Nathan -----	Colbert
	{	J. T. Stokely -----	Jefferson
	{	R. T. Ervin -----	Mobile
	{	N. D. Godbold -----	Wilcox
	{	J. B. Barnett -----	Monroe

1916-17.	{	J. T. Stokely -----	Jefferson
		C. P. Beddow -----	Jefferson
		Henry F. Reese -----	Dallas
		J. Manly Foster -----	Tuscaloosa
		Harry T. Smith -----	Mobile

SECRETARY AND TREASURER,

1879-1917.

ALEXANDER TROY.

E. G.

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DECEASED HONORARY MEMBERS.

Jno. A. Campbell	Louisiana
Thomas J. Semmes	Louisiana
Geo. W. Stone	Alabama
H. M. Somerville	New York
David Clopton	Alabama
Thos. N. McClellan	Alabama
W. P. Webb	Alabama
H. D. Clayton, Sr.	Alabama
Seymour D. Thompson	Missouri
Jno. Randolph Tucker	Virginia
Jno. F. Dillon	New York
George Hoadly	New York
John Bruce	Alabama
James B. Head	Alabama
Sterling B. Toney	Colorado
Jno. Haralson	Alabama
S. M. Meek	Mississippi
D. D. Shelby	Alabama
J. R. Lamar	Georgia
J. M. Falkner	Alabama
Edward M. Shepard	New York
R. T. Simpson	Alabama
F. H. Busbee	North Carolina

LIST OF DECEASED MEMBERS.

Little, Wm. G. -----	1879	Foster, Jno. A. -----	1893
Woolf, H. A. -----	1879	Holtzclaw, Jas. T. ----	1893
Northington, Wm. H. --	1880	McKleroy, Jno. M. ----	1894
Lockett, Powhatan ---	1881	Roper, J. F. -----	1894
Boyles, Wm. -----	1882	Semple, H. C. -----	1894
Padgett, Jno. A. -----	1882	Shepherd, Jno. W. ----	1894
Stewart, Geo. N. -----	1882	Stone, Geo. W. -----	1894
Enochs, John -----	1883	Dawson, N. H. R. -----	1895
Jones, Wm. G. -----	1883	Hargrove, A. C. -----	1895
Macartney, Thos. N. ---	1883	Hewitt, G. W. -----	1895
Price, Thos. H. -----	1883	Troy, Daniel S. -----	1895
Buell, David -----	1884	Wagner, C. G. -----	1895
Croom, Stephens -----	1884	Welch, Theo. -----	1895
Fitzpatrick, E. J. -----	1884	Wilson, Henry -----	1895
Peyton, Bernard -----	1885	Clark, Frank B. -----	1896
Gordon, Geo. S. -----	1886	Overall, G. Y. -----	1896
McIver, W. C. -----	1886	Seay, Thomas -----	1896
St. Paul, Henry -----	1886	Arnold, J. M. -----	1897
Barnes, Wm.H. -----	1887	Gamble, John -----	1897
Bond, James -----	1887	Little, Jas. H. -----	1897
Sayre, P. T. -----	1887	Smith, Lester C. -----	1897
Hamilton, Peter -----	1888	White, J. M. -----	1897
Heflin, Jno. T. -----	1888	Milligan, M. E. -----	1898
Banaugh, James -----	1889	Tompkins, H. C. -----	1898
O'Neal, E. A. -----	1890	Foster, J. W. -----	1899
Smith, John Little ----	1890	Hill, Walton W. -----	1899
Sterrett, R. H. -----	1890	Brickell, R. C. -----	1900
Stone, Lewis M. -----	1890	Fitzpatrick, J. M. -----	1900
Bragg, W. L. -----	1891	Foster, Wilbur F. ----	1900
Brandon, Jno. D. -----	1891	Roquemore, Jno. D. --	1900
Day, L. W. -----	1891	Speake, H. C. -----	1900
Long, J. E. -----	1891	Brothers, S. D. G. ----	1901
Patton, C. H. -----	1891	Pettus, F. L. -----	1901
Smith, David D. -----	1891	Samford, W. J. -----	1901
Whitfield, J. F. -----	1891	Caldwell, Jno. H. ----	1902
Williamson, R. M. -----	1891	Blakey, David T. -----	1902
Wood, S. A. M. -----	1891	Lomax, Tennent -----	1902
Chilton, Wm. P. -----	1892	Jones, R. C. -----	1903
Dean, L. L. -----	1892	Bibb, W. C. -----	1903
Clayton, H. D. -----	1892	Stansel, M. L. -----	1903
Watts, Thos. H. Sr. ---	1892	Lowe, R. H. -----	1903
Clark, Gaylord B. ----	1893	Bullock, W. I. -----	1904
Fitzpatrick, Benj. -----	1893	Graham, E. A. -----	1904

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Massie, P. C.	1904	Simpson, R. T.	1912
Winter, Jno. G.	1904	Whitson, C. C.	1912
Wood, J. R.	1904	Granade, Jos. C.	1913
Dill, Henry R.	1905	LeGrand, M. P.	1913
Hipp, R. L.	1905	Screws, W. W.	1913
Clarke, R. H.	1906	Smith, Jno. V.	1913
Coleman, Daniel	1906	Boone, B. B.	1914
Gray, Jas. W.	1906	Harmon, R. L.	1914
Kirkland, W. W.	1906	Jones, Thos. G.	1914
McClellan, Thos. N.	1906	Mullins, Tipton	1914
Martin, Wm. L.	1907	Barnett, A. E.	1915
Falkner, J. M.	1907	Smith, Mac A.	1915
Pettus, E. W.	1907	Thorington, W. S.	1915
Roulhac, Thos. R.	1907	Chilton, J. M.	1915
Evans, Geo. A.	1908	Crumpton, W. C.	1915
London, Alex. T.	1908	Ferguson, F. S.	1915
Wiley, A. A.	1908	Partridge, Danl. Jr.	1915
Humes, Milton	1908	Letcher, J. T.	1916
Pearson, R. H.	1909	Pearson, W. W.	1916
Miller, J. N.	1910	Pleasants, S. S.	1916
Richardson, J. C.	1910	Thach, H. C.	1916
Bestor, D. P. Sr.	1911	Jones, Geo. P.	1916
Russell, E. L.	1911	Watts, Edw. S.	1916
Sanders, J. F.	1911	Golson, H. R.	1917
Smith, J. A. W.	1911	Percy, Walker.	1917
Tomlinson, J. W.	1911	Pitts, W. L.	1917
Austill, H.	1912	Pelham, John	1917

ANNUAL ADDRESSES.

<i>Year.</i>	<i>Name.</i>	<i>Subject.</i>
1883.	GEORGE HOADLY	The True Limits of Municipal Law in a Democracy.
1884.	JOHN A. CAMPBELL	Alabama: A review of her condition at different stages of existence.
1887.	JNO. F. DILLON	A Century of American Law.
1888.	JOHN RANDOLPH TUCKER.....	The Common Law as the germ of Civil Liberty and of Progressive Jurisprudence.
1889.	GEORGE W. STONE.....	Judicial Reform.
1890.	SEYMOUR D. THOMPSON.....	The Federal Judiciary.
1893.	STERLING B. TONEY.....	The Rule requiring Unanimity Verdicts in Civil Cases should be abrogated.
1894.	THOMAS J. SEMMES.....	Influence of the Civil on the Common Law.
1895.	SAAMUEL B. MEEK.....	The Power and Influence of the Bar.
1896.	ALEX. C. KING.....	The Growth of the Constitution.
1899.	H. M. SOMERVILLE.....	Trial of the Alabama Supreme Court Judges in 1829. The last of a series of Political Assaults on the Independence of the Judiciary in the last Century.
1900.	WILLIAM J. CURTIS.....	James Kent, the Father of American Jurisprudence.

<i>Year.</i>	<i>Name.</i>	<i>Subject.</i>
1901.	HILARY A. HERBERT.....	{ The Duties and Responsibilities of the American Lawyer in the Twentieth Century.
1902.	JOSEPH R. LAMAR.....	{ The Work and Position of American Courts.
1903.	EDWARD M. SHEPARD.....	{ The Promise of the Isthmian Canal.
1904.	FABUS H. BURKE.....	{ Duty of Southern Lawyers to- wards the Negro Question.
1905.	JOHN W. JUDD.....	{ The Fourteenth Amendment— Its History and Evolution.
1906.	JUDSON HARMON	{ Independence of the Judiciary.
1908.	ALEX P. HUMPHREY.....	{ The Supreme Court and the Civil War.
1909.	WILLIAM J. CURTIS	{ The History of the Purchase by the United States of the Panama Canal, The Manner of Payment, and the Distribu- tion of the Proceeds of Sale.
1910.	PETER W. MELDRIM	{ Aaron Burr.
1911.	W. A. BLOUNT	{ The Past, Present and Fu- ture Status of Employers and Employees.
1912.	ALFRED P. THOM.....	{ The Pending Revolution.
1913.	EDWARD T. SANFORD	{ The Beginning of the Federal Judiciary.

<i>Name. Year.</i>	<i>Subject.</i>
1914. ROBERT C. ALSTON	{ Andrew Johnson, President of the United States, His part in the reconstruction of the South and his impeachment.
1915. HANNIS TAYLOR	{ Our Rights and Duties as a Neutral Nation.
1916. WM. M. LILE	{ Some Views on the Rule of <i>Stare Decisis.</i>
1917. H. G. CONNOR	{ John Archibald Campbell.

PAPERS READ.

<i>Year.</i>	<i>Names.</i>	<i>Subject.</i>
1879.	Geo. F. Moore	{ Code Pleading and Practice in Alabama.
1879.	John Little Smith	{ The Roman Bar.
1880.	M. L. Stansel	{ Champerty.
1880.	Geo. F. Moore	{ Judicial Delay.
1181.	Hannis Taylor	{ Inter-state Code Commission.
1881.	Jno. M. McKleroy	{ Equity Jurisdiction and Practice.
1881.	H. G. McCall	{ The Unpopularity of the Bar.
1882.	David Buell	{ Ought the Chancery Court to be abolished?
1882.	Wm. P. Chilton	{ Mobocracy. Its remedy: The Maintenance of Law and Judicial Authority.
1882.	John Little Smith	{ The Trial of Clodius.
1882.	Henry St. Paul	{ Family Relations.
1882.	John D. Gardner	{ Shall we Have a Bankrupt Law?
1882.	L. A. Shaver	{ Trial by Jury.
1882.	E. P. Morrisett	{ The Alienation of Homesteads in Alabama.
1882.	A. B. McEachin	{ Our Code and Reports.
1883.	Stephens Croom	{ The Lien of Judgments.
1883.	Hillary A. Herbert	{ The Supreme Court of the United States as a factor in Federal Politics.

<i>Year.</i>	<i>Name.</i>	<i>Subject.</i>
1883.	JNO. A. FOSTER	{ The Sale of Land for Division.
1884.	H. C. TOMPKINS	{ Necessary Reformation in the Administration of the Criminal Law.
1884.	R. W. WALKER	{ Separate Courts of Chancery.
1884.	DANIEL COLEMAN	{ Reform in the Administration of the Criminal Law.
1884.	HENRY D. CLAYTON JR.	{ Defects of and abuses in the Administration of the Criminal Law.
1884.	DANIEL S. TROY	{ The Moral Responsibility of the Legal Profession for the Administration of Public Justice.
1884.	HARRY PILLANS	{ Limitations upon the Quarantine Power.
1884.	F. S. FERGUSON	{ Mixed Pickles.
1884.	JAMAS WEATHERLY	{ Judicial Delay in Alabama.
1884.	ALEX. T. LONDON	{ The Code of Civil Procedure as administered in North Carolina.
1884.	W. R. HOUGHTON	{ Some Legal aspects of the Negro Question.
1885.	W. G. HUTCHESON	{ An International Court.
1885.	SAM WILL JOHN	{ Local Legislation.
1885.	H. AUSTILL	{ The Statutory Estates of Married Women in Alabama.
1886.	DAVID T. BLAKEY.....	{ The Jurisdiction and Practice of the Probate Court in Alabama.

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1886.	HANNIS TAYLOR	{ The Inefficiency of Congress as a Legislative Body.
1887.	HORACE STRINGFELLOW	{ Inter-state Commerce Law.
1887.	A. C. HARGROVE	{ Legal Education and Admin- sion to the Bar.
1887.	JOHN S. WINTER	{ The Unconstitutionality of the Statute authorizing the State to sue out Attachments with- out affidavit made or bond given.
1888.	Z. M. P. INGE	{ Lawyers in Politics.
1888.	THOS. H. WATTS, JR.	{ To what liabilities do the Ex- emption Laws extend?
1889.	AMOS E. GOODHUE	{ The Ideal Lawyer.
1889.	ALEX. T. LONDON	{ Some Suggestions for Reform.
1890.	A. B. McEACHIN	{ The Lawyer in Politics.
1890.	D. P. BESTOR, SR.	{ The Disinclination of Superior men to engage in Politics.
1890.	E. L. RUSSELL	{ The Supreme Court and Inter- state Commerce.
1890.	GEO. F. MOORE	{ The Justice of the Peace.
1899.	W. R. NELSON	{ Business Methods for Lawyers.
1892.	JNO. A. FOSTER	{ Politics on the Bench.
1892.	SAM WILL JOHN	{ The Impending Crisis — Our Duty.
1892.	THOS. R. ROULHAC	{ The Necessity for Statutory Regulation of Adverse Pos- session.

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1893.	J. J. WILLETT	The Case Lawyer.
1893.	S. H. DENT, JR.	{ Common Law System of Plead- ing.
1893.	JOHN C. EYSTER	{ Statutory changes in Commer- cial Law.
1893.	EDW. DE GRAFFENREID	{ The influence of Rome upon the Common Law of Eng- land.
1894.	JNO. W. TOMLINSON	{ Why Pleadings should be veri- fied by affidavit.
1894.	S. D. WEAKLEY	Labor and the Law.
1894.	DAVID T. BLAKEY	Electricity in the Law.
1895.	JOHN LONDON	Exemptions from Execution.
1895.	W. L. CHAMBERS	Our International Relations.
1896.	C. A. MOUNTJOY	The Supreme Court.
1896.	JNO. V. SMITH	{ The Age of Consent in Ala- bama.
1896.	H. C. TOMPKINS	Judah Phillips Benjamin.
1897.	R. L. HARMON	The Lawyer and the Shyster.
1898.	PHILLIP H. STERN	{ Criminal Law and the Law of Criminals.
1898.	JAS. M. DAVISON	Our Judiciary and Politics.
1899.	JNO. C. ANDERSON	{ The Exemption Laws of Ala- bama.
1899.	WM. M. BLAKEY	{ Practical workings of the Bank- rupt Law.

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1900.	WM. H. THOMAS	{ The Birth and Growth of the Constitution of Alabama.
1900.	VIRGIL BOULDIN	{ Some Suggestions on the Re- vision of our State Consti- tution.
1900.	ARTHUR B. FOSTER	{ Limit of Legislative Control over Private Property affect- ed with a Public interest.
1900.	THOS. R. ROULHAC	{ The Possession and Government of Colonies will be Fatal to the Republic.
1901.	FRANCIS G. CAFFEY	{ The Annexation of West Flor- ida to Alabama.
1901.	LAWRENCE COOPER	{ The Makers of the Law.
1901.	THOS. M. OWEN	{ Ephraim Kirby, First Superior Court Judge in what is now Alabama.
1902.	W. T. SANDERS	{ Legislation touching matters under the new Constitution.
1902.	SAM WILL JOHN	{ Two Lawyers—Two Chief Jus- tices.
1902.	DANIEL COLEMAN	{ Jury Reform.
1903.	W. L. MARTIN	{ The British Constitution.
1903.	PAUL SPEAKE	{ Wantonness in Personal In- jury Cases.
1903.	EDW. DE GRAFFENREID	{ The effect of Slavery upon the Constitutions and Laws of the United States and of the State of Alabama.
1904.	C. P. McINTYRE	{ Civil Procedure.

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1904.	H. E. GIPSON	{ Delay of the Law as an excuse for Lynching.
1904.	SAM WILL JOHN	{ A Just and Fearless Judge— John Moore.
1904.	ALEXANDER TROY	{ Retrospect.
1904.	F. M. PURIFOY	{ Growth and Development of the scope and Power of Trust Companies.
1905.	W. L. CHMERS	{ The Ministry of the Lawyer.
1905.	LAWRENCE COOPER	{ Our Railroad Commission.
1905.	ARMSTEAD BROWN	{ Alabama's New Corporation Law.
1905.	EMMET O'NEAL	{ The Power of Congress to re- duce Representation in the House of Representatives and the Electoral College.
1905.	THOS. G. JONES	{ Has the Citizen of the United States in the custody of the State's officers, upon accusa- tion of Crime against its Laws any Immunity or right which may be protected by the United States against Mob Violence.
1906.	DANIEL PARTRIDGE, JR.	{ The Rationale of Interference by Injunction with Criminal Prosecution under void Mu- nicipal Ordinances.
1906.	HENRY FITTS	{ Trial Courts in Alabama.
1907.	ARMSTEAD BROWN	{ The Province of Law.
1907.	W. S. THORINGTON	{ The Statute of Amendments as affecting the Common Law Rule as to Departure, and the Doctrine of Relation.

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1907.	H. E. GIPSON	{ The Caricaturist as a Civil Power.
1908.	HENRY UPTON SIMS	{ Desirable changes in our Chancery Practice after the New Code of 1907.
1908.	B. B. BRIDGES	{ Judicial Procedure and Administration of the Criminal Law.
1908.	EMMET O'NEAL	{ Election of United States Senators by the People.
1908.	H. M. SOMERVILLE	{ Witch Law and Witch Tribunals of the Seventeenth Century.
1908.	W. S. THORINGTON	{ Amendment of Complaints, and the Doctrine of Relation under the Laws of Alabama.
1908.	WM. C. FITTS	{ Telephoning Telegraph Messages.
1909.	E. W. FAITH	{ Buying a Piece of Land.
1909.	R. C. BRICKELL	{ Common Law Marriages.
1909.	EMMET O'NEAL	{ Quadrennial Sessions of the Legislature.
1909.	S. L. FIELD	{ The Majesty of the Law.
1910.	SAM WILL JOHN	{ Jury Law.
1910.	McLANE TILTON, JR.	{ The Law, Lawyers, and Law-making to the Business Man.
1910.	C. B. VERNER	{ Administration of the Criminal Laws of Alabama.
1910.	THOS. M. STEVENS	{ The Alabama Supreme Court is overworked and should have relief.

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1911.	SAM WILL JOHN	{ Our imperative Duty to procure a Judicious Reform of the Judicial Procedure in the Courts of Alabama.
1911.	W. W. LAVENDER	{ Judiciary Recall.
1911.	L. J. BUGG	{ Direct Legislation and its oper- ation in America.
1911.	W. W. WHITESIDE	{ Some Mistakes by Lawyers and Judges.
1911.	C. C. WHITSON	{ The Subordination of the Judge to the Jury.
1911.	RAY RUSHTON	{ Handling the Facts.
1912.	VIRGIL BOULDIN	{ Law and Procedure.
1912.	CEEMENT R. WOOD	{ The Breakdown of the Law.
1912.	J. T. LETCHER	{ Reversals in Criminal Cases.
1912.	W. H. MITCHELL	{ The Relation of the Bar to the State's Law School.
1912.	EMMET O'NEAL	{ Law Reform.
1912.	LAWRENCE COOPER	{ Stop! Look and Listen! as applied to popular Agi- tation.
1912.	WM. H. THOMAS	{ A Recent Industrial Decision.
1913.	J. T. STOKELY	{ Compensation for personal in- juries to employees.
1913.	J. K. DIXON	{ What should be the Require- ments in this State for a per- son to be allowed to practice law.

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1913.	JNO. E. MITCHELL	{ The Law's Delay v. the Lawyer's Delay.
1914.	W. R. WALKER	{ Legislative power to require roads worked without compensation.
1914.	WM. M. BLAKEY	{ Some of the pernicious influences of the Common Law yet existing in our Law of inheritance.
1914.	SAM WILL JOHN	{ Do the Bench and Bar really desire a genuine reformation of the Practice and Procedure in our Courts?
1915.	J. T. DENSON	{ The Doctrine of Comparative Negligence.
1915.	E. G. RICKABY	{ Some Suggestions as to Practice from Admiralty Procedure.
1915.	FRANCIS G. CAFFEY	{ The United States Cotton Futures Act.
1915.	SAMUEL B. STERN	{ Decisions of Courts of Last Resort based on other than Fundamental Principles.
1916.	HARRY T. SMITH	{ Political Judiciaries.
1916.	LEROY P. PERCY	{ Workmen's Compensation Acts.
1916.	H. A. BRADSHAW	{ The Business of Making Laws.
1916.	E. W. GODDEY	{ The Legal Reform that is Worth While.
1916.	W. M. WILLIAMS	{ Applicability of the Inter-state Commerce Act to Telegraph Companies.

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|-----------------------|-------|---|-----------------------------------------------------------------------------------------------------------------------|
| 1917. W. H. ARMERECHE | | { | The Duty of the Older Mem-
bers of the Bar to the
Younger Members of Bar. |
| 1917. WM. M. ULLMAN | | { | Some of the Needs of Ala-
bama. |
| 1917. EMMET O'NEAL | | { | The State Constitution. |
| 1917. SAM WILL JOHN | | { | The Necessity of a Work-
man's Compensation Law
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and Insurance of Land Ti-
tles |

REPORT OF THE COMMITTEE OF THE MISSISSIPPI
STATE BAR ASSOCIATION ON UNIFIED COURT
FOR MISSISSIPPI.

Published here pursuant to a resolution of the Alabama
State Bar Association.

Sec. 1. The Judicial Power of the State Vested in One General Court, Consisting of Three Divisions.—The judicial power of the State shall be vested in one General Court, consisting of three permanent divisions: (1) the Court of Appeals, (2) the Circuit Court, and (3) the District Court; and in such other tribunals as are provided for herein.

Sec. 2. The First Division, the Court of Appeals, Its Jurisdiction, and Constitution.—The Court of Appeals shall have jurisdiction of final appeals, and shall consist of one permanent division, to be known as the Supreme Court division, composed of the Chief Justice and six associate justices, and as many temporary additional divisions of three justices and judges each as the Judicial Council may from time to time deem necessary. The Supreme Court division shall have power to sit in divisions of three justices each, any two of whom when convened shall form a quorum, and likewise as to any additional temporary divisions of the Court of Appeals; and each of said divisions, whether of the Supreme Court or said additional divisions, shall have full power to hear and finally adjudge all causes that they may be assigned to said respective divisions by the Chief Justice or under his direction, except that in all capital cases, or causes involving the interpretation of the State or the Federal constitutions, or the constitutionality of any law, and in each case where the justices, or justices and judges, composing any division of the Court of Appeals, shall differ as to the judgment to be rendered therein, or where any justice or judge of either of such divisions shall certify to the Chief Justice that in his opinion any proposed opinion of any such division of the Court of Appeals is in conflict with any prior opinion or decision of the said Court, own motion so find or apprehend, such cause or causes, or any division thereof, or should the Chief Justice of his

shall be considered and adjudged by the permanent Supreme Court or a quorum thereof in banc. The Judicial Council shall have power to direct that for a stated time the Court of Appeals shall consist of more than two divisions, whereupon the Chief Justice shall select and require the services on the Court of Appeals of three or more judges of the Circuit or District Court divisions, so long as so required.

Sec. 3. Records in the Court of Appeals Must Be Read by at Least Three Justices or Judges Thereof.—No case shall be adjudged in the Court of Appeals until the record (except where there is substantial agreement in all the briefs as to the material facts in the case) and briefs have been fully read or heard read by at least three justices or judges thereof.

Sec. 4. The Second Division, the Circuit Court, and Its Jurisdiction.—The Circuit Court shall consist of two divisions: (1) the Chancery Division, dealing with equity, probate and domestic relations, causes and matters; and (2) the Law Division, dealing with law and criminal causes. The Circuit Court shall have full original jurisdiction of all matters, civil and criminal, not herein committed to the District Court or other tribunals, and such appellate jurisdiction, as herein or by law provided.

Sec. 5. The Third Division, the District Court, and Its Jurisdiction.—The District Court shall consist of but one division and shall have full original jurisdiction as follows:

1. All jurisdiction heretofore exercised by justices of the peace in civil cases;

2. All causes, proceedings and matters either at law or in equity where the amount in controversy exclusive of interest and cost shall not exceed the sum of \$500.00;

3. All matters testamentary and of administration, where the estate does not exceed \$500.00 in value.

4. All misdemeanors whether presented by indictment or otherwise, except those relating to violations of the laws as to intoxicating liquors; but where a prosecution for

felony is begun in the Circuit Court it shall have full jurisdiction thereof, although same may result in a conviction of a lesser offense.

5. All civil cases without limit as to amount when the parties in writing consent, providing all the parties be competent so to consent.

6. Such further jurisdiction, appellate and otherwise, as is hereinafter provided.

The Judicial Council shall have power to vary the above jurisdictional amounts, and to withdraw in any district court district for a stated time the consent jurisdiction provided under number 5 foregoing.

In all civil causes, pending in any division of the Circuit Court, the District Court shall have the power and jurisdiction, concurrent with the Circuit Court, after the monthly return day (1) in non-contested cases: to grant judgments by default, and decrees pro confesso and final decrees therein, with all proper process to enforce same, and (2) in contested cases: to hear and determine demurrers, exceptions, and motions, and to make all interlocutory orders preparatory to the hearing thereof, upon their merits, in said Circuit Court.

Sec. 6. The Administrative Powers of the General Court Vested in the Judicial Council; Its Constitution, Functions and Duties.—The administrative power of the General Court shall be vested in the Judicial Council, which shall consist of the Chief Justice, one Associate Justice, the Circuit Judge at large, one Circuit Judge of the Law Division, one of the Chancery Division, and two district judges, each to serve during his existing term of office as a member of said General Court. The powers of the Judicial Council shall be:

1. To divide the State (a) into six circuits to be known respectively as the Northeastern, Northwestern, Eastern, Western, Southeastern and Southwestern Circuits, composed each of contiguous counties, and to alter said six circuits from time to time, except as hereinafter limited, and

(b) into the necessary and convenient number of districts, not exceeding thirty, for the District Court. In determining district court districts, a judicial district, or a supervisors' district or districts, of one county may be annexed to an adjoining county or counties, but such district court districts shall consist of contiguous territory in all cases.

(c) To increase or decrease the number of district court districts and to change the boundaries from time to time, except as hereinafter limited and may vacate the office of any district judge when said districts are decreased, but such vacating of office shall not be had except upon at least a 5-7 vote of the Judicial Council. The number of said districts shall not be increased above the number herein provided except by Act of the Legislature assenting thereto. No change shall be made, however, in any circuit or district, as to their boundaries within two years next preceding a general judicial election, excepting only in case of the creation of a new county.

A session of the Court of Appeals shall be held twice in each year at the seat of government, at such time and to continue as long as the Judicial Council may determine and a session of each division of the Circuit Court shall be held at the county seat in each county at least twice a year, and except in the month of August a session of the District Court shall be held at each county seat at least once a month, and at other convenient places in the county as often as required, and the Judicial Council shall fix the terms, and the time of each Circuit Court, and the terms and times and places of the holding of District Courts, throughout the State, and may from time to time alter or change the same.

2. (a) To make, alter, amend, and promulgate all rules regulating the pleading, practice and procedure in all the courts, subject, however, to repeal of any such rule, in whole or in part by the Legislature after two years from date of promulgation, and no rule or part of rule so repealed shall be reinstated without the assent of the Legis-

lature thereto; and (b) to prescribe generally the conduct and duties of all judges, and clerks and jury commissioners and other officers of the courts, including the duties and acts that may be performed by the judges and clerks in vacation.

3. The Judicial Council may transfer any cause or class of causes for a stated time from the district court or any district thereof, to the proper Circuit Court, and vice versa.

4. The Judicial Council shall have the power and perform such other duties as herein, or by law, provided.

Sec. 7. The Chief Justice; His Duties and Powers, Administrative and Judicial.—The Chief Justice shall exercise general supervision over all divisions, and parts thereof of the General Court; he shall be President of the Judicial Council, and shall see that its rules and orders are executed. He shall convene the Judicial Council in session semi-annually and as much oftener as deemed by him necessary. He shall see that there be no conflict in the decisions or written opinions of the divisions of the Court of Appeals, and shall sit as a member of the Supreme Court Division when the Court is considering any cause in banc. He shall occasionally interchange Supreme Justices with Circuit Judges, and Circuit Judges with District Judges, and shall fix the vacation of all judges. He shall require each judge to make an annual report to him; shall provide and make an annual address at each yearly session of the justices and judges of the General Court, and shall thereafter make an annual report to the Governor. He shall appoint all justices and judges to fill all vacancies for unexpired terms, and to fill any additional districts created, and he shall perform such other duties as herein, or by law, required. In appointing an associate justice for the unexpired term of another justice the selection shall be made from among the Circuit or District Judges then in office for the Circuit, in which the vacancy exists, and in appointing a Circuit Judge for the unexpired term of another Circuit Judge the selection shall be made from among the District Judges then in

office within said circuit. In case of a vacancy in the office of Chief Justice, the Governor shall fill same by appointment for the remainder of the unexpired term.

Sec. 8. Jurisdictional Lines in Civil Cases Directory Only.—The provisions of this constitution as to the civil jurisdiction conferred upon the Circuit and District Courts are directory only, and no judgment or decree of said courts or any division thereof shall be reversed or annulled on the ground of want of such jurisdiction; but the Court of Appeals shall find error in the proceedings in any case and it shall be necessary to remand the same, it shall remand the case to the division, which in its opinion, can best determine the controversy. It shall be the duty of each county clerk of courts to assign each case filed to the docket of the proper division of the Circuit Court, or to the District Court, as the facts pleaded may require, subject to re-assignment by the judge. All judges shall have the same power within the State as within their respective circuits or districts.

Sec. 9. Qualifications of Justices and Judges, in General.—No person shall be eligible to the office of a justice or judge of the General Court who shall not have attained the age of thirty years, at the time of his election or appointment and who shall not have been a practicing attorney or judge, and a citizen of the State, for nine years immediately preceding such election or appointment.

Sec. 10. Judicial Elections; Further Qualifications of Candidates, and as to Judicial Campaigns.—There shall be a judicial election held every four years throughout the State, at a time to be fixed by the Legislature, separate and apart from all other state or national elections, but the Legislature may at any time fix said elections more than four years apart, in which event the terms of judges and justices shall thereby become correspondingly lengthened. Before any person not theretofore having been a justice or judge may become a candidate in any judicial election for judge or justice of the General Court, or be appointed

thereto, he shall be examined by the Judicial Council, under such general rules as it may adopt, (1) upon his moral fitness, (2) upon his administrative and executive fitness, and (3) upon his legal learning, and shall have procured a certificate of qualifications upon such examination from the Judicial Council; but any person having once successfully passed such examination shall be exempt therefrom as to future candidacies. Any person who has, upon such examination, been denied a certificate of qualifications by the Judicial Council, shall have the right to apply within twenty days thereafter to the Chief Justice for a reconsideration of the decision upon his said examination, whereupon the Judicial Council shall within ten days further thereafter proceed to so reconsider same, in a public hearing at the seat of government, wherein the said party shall have the right to appear and be heard by himself or counsel, or by both, and the said Judicial Council shall thereupon have the power to affirm or reverse and grant the certificate, or to award another examination, in either of which cases it shall fully state the reasons for its actions in writing and spread the same upon its minutes. All the papers and records touching not only the examination of the party in question, but all other like examinations shall be public records and shall be available on such said hearing. The Judicial Council shall make and promulgate proper and reasonable general regulations for the conduct of judicial campaigns and for the promotion of the dignity and integrity thereof, any wilful violation of which regulations when established beyond a reasonable doubt before the Judicial Council shall disbar any offending candidate from taking or holding office, if elected, if at least 5-7 of the Judicial Council shall so hold.

Sec. 11. Manner of Election of the Chief Justice, and of the Associate Justices; Their Terms of Office.—The Chief Justice shall be elected by the qualified voters for a term of four years from the State at large. The Associate Jus-

tices shall be elected at proper intervals, one from each of said circuits, for a term of eight years.

Sec. 12. Manner of Election or Selection of Circuit and District Judges; Their Terms of Office.—The judges of the law division of the Circuit Court shall be elected two from each of said Circuits at each such said general judicial election for a term of four years. The said judges of the law division of the Circuit Court shall alternate with each other in each county of their respective circuits each year, excepting in cases of interchange, or other assignments as herein provided. The judges of the District Court shall be elected at said election, each from their respective districts for a term of four years, and at all said elections the same shall be for and from the circuits or districts as respectively constituted at the time of such election. The judges of the Chancery Division of the Circuit Court shall be appointed by the Chief Justice, one for each of said circuits, for a term of six years.

Sec. 13. Removals of Justices and Judges Shall Not Disqualify Them.—The removal of a justice, or of the Circuit Judge at large, to the State Capital during his term of office, or the removal of a judge to a more convenient point within his circuit or district, shall not affect his qualifications as an elector in the election precinct from which he has so removed.

Sec. 14. Manner of Selection of Members of the Judicial Council, and Filling Vacancies Therein.—The regular terms of justices and judges elected or appointed for full terms shall begin on the first Monday of January following, on which day they shall at the seat of government take the oath of office. The members of the Judicial Council, except the Chief Justice, and the Circuit Judge at large, shall be elected at the appropriate annual conventions of the justices and judges by the majority of the justices or judges of their respective divisions of the General Court, by private ballot, without nomination, and the terms of the members of said Judicial Council shall begin immediately upon

their selection thereto. No justice or judge-elect shall solicit a vote or votes for membership in said Judicial Council, nor request others to do so for him, and if any justice or judge who has been selected to such membership shall fail or refuse to serve as such, sickness excepted, he shall forfeit his office as justice or judge, same to be evidenced by a finding and order to that effect by the remaining members of said Judicial Council, and said vacancy in said Judicial office for the unexpired term shall thereupon be filled as herein provided in other cases of vacancies, and if for this, or any other cause there shall be a vacancy in said Judicial Council, the Chief Justice shall fill same by appointment until the next annual convention of the justices and judges of the General Court, when said vacancy shall be filled for the remainder of the unexpired term by election as hereinabove provided. The first Monday in January of each year is hereby fixed as the date of the said annual conventions.

Sec. 15. Disqualification of Justices or Judges, and Designations in Such Cases.—No judge of any court shall preside in the trial of any cause where the parties or either of them shall be connected with him by affinity or consanguinity, or where he may be interested in same, except by consent of the judge and of the parties. Whenever any justice or judge shall for any reason be unable or disqualified to serve at any term of court, or be elsewhere assigned, or in any case therein where the attorneys engaged shall not agree upon a member of the bar to preside in his place, the Circuit Judge at large shall serve, if available, and if not, then the Chief Justice shall designate and direct a proper judge of the General Court to serve. No member of the Judicial Council shall sit in any matter in which he may be personally interested, and the Chief Justice shall temporarily appoint to vacancies therein in and for such cases.

Sec. 16. The Circuit Judge at Large; His Duties, etc.—The Chief Justice shall appoint for a term of six years one

Circuit Judge from the State at large, to serve, upon designation by the Chief Justice, in any temporary additional division of the Court of Appeals, or in any other division of the General Court in the event of absence, sickness, or other disability or disqualification, or in case of other assignment of a justice or judge, and who in addition to his salary as Circuit Judge, shall receive his actual traveling expenses. He shall be required to reside at the State capital, and he shall be ex-officio the official reporter of the decisions of the Court of Appeals, without additional compensation as such reporter.

Sec. 17. Compensation of Justices and Judges.—The justices and judges shall receive for their services a compensation to be fixed by law, but which shall not be less than \$4,200.00 per year for justices, \$3,500.00 per year for Circuit Judges, and \$2,800.00 per year for District Judges, and the Legislature may provide a reasonable compensation to the members of the Judicial Council, additional to their salaries as justices or judges.

Sec. 18. The Oath of Office of Justices and Judges.—The judges of the several courts of this State shall, before they proceed to execute the duties of their respective offices, take the following oath or affirmation, to-wit: "I----solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as -----according to the best of my ability and understanding, agreeably to the constitution of the United States and the constitution and laws of the State of Mississippi. So help me God."

Sec. 19. Manner of Removal from Office.—Any justice or judge of the General Court may be removed at any time (a) by impeachment, or (b) by a two-thirds vote of each branch of the Legislature. And any circuit or district judge may be at any time removed by at least a five-sevenths vote of the Judicial Council, for (a) inefficiency,

or (b) incompetency, or (c) neglect of duty, or (d) conduct unbecoming a judge.

Sec. 20. The Clerks.—There shall be one clerk of the Court of Appeals who shall be ex-officio secretary of the Judicial Council, and one county clerk of courts in each county, to be selected in such manner and for such term as the Legislature shall provide, and whose respective duties shall be prescribed by the Judicial Council.

Sec. 21. The Jury Commissioners in Each County.—There shall be a jury commission of five members in each county to be appointed by the Judicial Council, one from each supervisor's district, for a term of four years, and whose duties shall be as prescribed by said Judicial Council.

Sec. 22. Grand and petit Juries.—There shall be twelve petit jurors in the law division of the Circuit Court, any nine of whom, in any civil case may return a verdict, and in the district court six petit jurors, any five of whom in like case may return a verdict. A grand jury shall be convened by the law division of the circuit court in each county at least twice each year.

Sec. 23. Justices of the Peace, and Their Jurisdiction.—There shall be one justice of the peace for each supervisors district in each county, to be chosen in the manner provided by law and who shall hold his office for the term of four years. They shall have jurisdiction concurrent with the district court over all crimes presented by affidavit or information, whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail, except in cases of violation of the liquor laws, jurisdiction of which is exclusively vested in the circuit court. In all cases tried by a justice of the peace, the right of appeal to the district court shall be secured as herein provided, and no justice of the peace shall preside at the trial of any case wherein the party or parties defendant or either of them, shall be connected with him by aginity or consanguinity. When any case has been presented before the district court by affidavit or information, whereof justices of the peace

have concurrent jurisdiction, the said district court, or the judge thereof in vacation, may by order transfer the same in his discretion to the justice of the peace for the proper district for trial, subject to the right of appeal as herein provided. The Judicial Council shall have power to remove any justice of the peace for extortion, or other misconduct in office.

Sec. 24. Office of Constable Abolished.—The office of constable is hereby abolished and all duties thereof shall be assumed by the sheriff.

Sec. 25. Inferior Municipal Criminal Courts, and Quasi-Judicial Tribunals.—The Legislature may, from time to time, establish such municipal criminal courts, as may be necessary, and abolish the same whenever deemed expedient, and nothing herein provided shall prevent the Legislature from vesting in Boards of Supervisors, Municipal Boards, or in any governmental board or commission such judicial or quasi-judicial powers as are properly incident and necessary to the full performance of their respective functions.

Sec. 26. Appeals, to What Courts Prosecuted.—Appeals from justices of the peace and from police justices and the like shall be to the proper district court, and from the board of supervisors, from municipal boards and the like shall be to the proper circuit court. Appeals from the circuit courts and the district courts shall be direct to the Court of Appeals, and all appeals shall be prosecuted under such process, rules and methods of procedure as shall be prescribed by the Judicial Council.

Sec. 27. When to Go Into Effect and Transfer of Justices and Judges.—This article of this constitution shall not go into effect until the first Monday in January following its adoption. The Chief Justice and Associate Justices of the Supreme Court in office at said time shall be the Chief Justice and Associate Justices of the Supreme Court division of the Court of Appeals, together with one additional associate justice to be appointed by the Chief Justice from

among the judges and chancellors at said time in office, all of whom shall be entitled to hold said offices until the expiration of the term for which they were respectively elected or appointed, and who shall be regarded as holding their offices from the State at Large. And the remaining circuit judges and chancellors shall each be entitled to be commissioned as circuit judges for their respective circuits upon the basis of seniority in continuous service, or in case of equality in said respect, then upon seniority in age, three for each circuit and the remainder as district judges, for the proper districts determinable by their residence, and all of whom shall be entitled to hold said offices until the expiration of the time for which they were respectively elected.

Sec. 28. Further of the Details of Transition.—The additional details of the transition from the former court organization to the present, including the selection of the remaining requisite number of district judges, and other officers shall be accomplished in accordance with a schedule adopted herewith, or in the absence thereof, by such anticipatory provisions as the Legislature may enact, or in the absence of either, by such method as the Supreme Court may in advance prescribe and promulgate.

Sec. 29. Present Rules of Practice Not to Be Changed for One Year.—The present rules of practice and procedure civil and criminal shall remain in force for one year after this article, this constitution shall go into effect, except that the Judicial Council shall make forthwith and during said one year such and only such changes or modifications, or additions thereto as shall be necessary to adjust said rules of practice and procedure to the court system herein provided.

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